EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED
FEB 14 1991
OFFICE OF THE CLERK

90-1571

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

DOUGLAS ZEPPEIRO, PETITIONER

VS.

SEAMAN & GRAHAM, P.A., RESPONDENTS

ROBERT E. SEAMAN III, P.A.

MARTIN E. MEADOWS

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DOUGLAS ZEPPEIRO, PRO SE PARTY

3069 SUMMIT CIRCLE

CAMARILLO, CALIF., 93012

(805) 491-2856

QUESTIONS PRESENTED

1. Did the concealment at the bench of Investment Contract Joint Exhibit 1 being materially altered by deletion of Securities Act of 1933, mislead the jury and violate Petitioner's Constitutional Rights to a fair trial?

2. On the judges Substantive Charge to the jury did the judge make prejudicial errors which misled the jury and caused petitioner's case to be mispled?

3. Were the petitioner's Constitutional Rights violated at the bench when his attorney concealed a stipulation and misrepresented that his client wants to withdraw his complaint for damages for emotional distress?

4. Was the petitioner's Constitutional Rights violated by not allowing his entitlement to a verdict on his fifth cause of action?
(FRAUDULENT INDUCEMENT TO CONTRACT)

QUESTIONS PRESENTED

5. Did the court on its charges to the jury misrepresent Petitioner's claim for fraud?

6. Was the Petitioner's complete ECCO GAS DRILLING CORP. investment contract prepared by Escrow agents Seaman & Graham P.A. & their involvement concealed from the jury?

7. Were the respondents as escrow agents guilty of fraudulent conversion & divided agency acts?

8. Was the jury presented with fabricated facts by the respondents & their attorneys?

9. Did the petitioner's Informal Brief alert the U.S. Court of Appeals 4th circuit Va., timely on 9-11-90 include exhibits tampered & mentioned irregularities at the trial and acts

QUESTIONS PRESENTED

of intentional misconduct of attorneys violating his rights to a fair trial?

10. Was the Summary Judgment Order of 9-18-88 stating that petitioner's 6th, 7, & 8 causes of action were barred by the statute of limitations a prejudicial error?

11. Did the court make prejudicial errors on its order of 2-24-89?

12. Did the respondents attorneys violate the Motion In Limine order creating a Constitutional Tort?

13. Did the respondents attorney say prior to filing this motion she made a good faith effort to resolve the matters herein?

14. Did the respondents and their attorneys misrepresent the facts in the Motion In Limine to the courts?

QUESTIONS PRESENTED

15. Were there prejudicial errors by the court on the orders of 12-11-89 and 4-12-90 and at trial ?

16. Did the respondents and their attorneys misrepresent to the courts the facts on the Informal Brief of Appellees on 90-2435 U.S. Court of Appeals 4th circuit Va.?

17. Did Marty Martin's testimony acknowledge that respondents were to purchase 105 oil wells for ECCO GAS DRILLING CORP. & the 4 best wells to go to ECCO GAS DRILLING CORP. investors & petitioner's 10% stock of EDGC OHIO Corp. as employee & Director.?

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 4th CIRCUIT

OPINIONS BELOW 3

JURISDICTION 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENTS OF THE CASE 4

REASONS FOR GRANTING THE WRIT 38

CONCLUSION 38

INDEX TO APPENDICES

ECCO GAS DRILLING CORP INVESTOR LETTER. A

PURCHASERS TERM AGREEMENT PLEADINGS EX-A. A-2

DEVELOPMENT AGREEMENT SEC ACT 1933

PLAINTIFFS 20 PAGE 2 ALTERED COPY A-3

ESCROW AGREEMENT JOINT 2 A-4

ECCO GAS DRILLING SCHEDULE A- WELLS % A-5

ECCO GAS DRILLING SCHEDULE B- collateral A-6

ALTERED TERM AGREEMENT JOINT 1 B

PLAINTIFFS PRO SE PARTY ALERTING COURTS B-1

U.S. DISTRICT COURT JUDGMENT S.C.12-11-89 C

U.S. DISTRICT COURT ORDER S.C. 4-12-90 C-1

EGDC INVESTORS FUNDS,FACTS, S & G ESCROW C-2

S & G MISREPRESENT INVESTORS JOINT 9 C-3

S & G CHECKS FOR EGDC ESCROW OHIO WELLS C-4

OHIO EX-75-13 CONCEALED FROM PETITIONER C-4A

EXCERPTS JURY TRIAL (partial sent appeals C-5

MOTION IN LIMINE EXCERPTS C-5 1 to 9, 13 to 16

PETITIONER: ESCROW-INVESTORS-FRAUD- C-5 -21-26

COURT ORDERED ANSWER PARTIAL CONTEXT C-5-27-30

EGDC EMPLOYEE MARTY MARTIN TESTIMONY C-5 30-40

VOL I TRIAL JURIST,FABRICATED FACTS C-6 1-8

U.S.COURT APPEALS DENIES HAVING EXHIBITS C-7

ENTERPRISES ESCROW SAME 105 WELLS SEAMAN C-8

INFORMAL BRIEF OF APPELLANT PAGES 1 to 8 D

INFORMAL BRIEF TABLE OF CONTENTS I pgs 9-12 D

U.S. COURT APPEALS DISMISSAL 90-2435 D-1

U.S. COURT APPEALS FRAP DISMISSED UNTIMELY D-2

TRIAL EXHIBIT AGREEMENTS ALTERED COPIES D-3

U. S. CONSTITUTION 1ST & 14th AMENDMENTS E

VIOLATION MOTION IN LIMINE ORDER 4 pages F

U.S. SUPREME JUDGE PROFESSOR ? TO RESPONDENT G

TABLE OF AUTHORITIES CITED

CASES	PAGE
	Violation of Motion
Witkin v. Calif.	In Limine
CCP. 657 (1) CCP 616.	**APPENDIX F**

CASES	PAGE
LAWLESS V. CALAWAY	EXCLUSION OF
(1944) 24 Cal. 2d 81, 91,	EVIDENCE
147 P2d 604	**APPENDIX F**

UNITED STATES CONSTITUTION	
FIRST AND FOURTEENTH AMENDMENTS	**APPENDIX E**

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

DOUGLAS ZEPPEIRO, PLAINTIFF

VS.

SEAMAN & GRAHAM, P.A., RESPONDENTS

ROBERT E. SEAMAN III, P.A.

MARTIN E.MEADOWS

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Petitioner, Douglas Zeppeiro, PRO SE PARTY respectfully prays that a writ of certiorari issue to review:

A. To review the trial 3-88-450-16 Columbia, S.C. including Judges Charges Motion IN lIMINE 9-19-88 Order, 2-24-89 Order and all exhibits.

B. Review the request for a new trial & oral hearing of 3-27-1990, 4th district Col.,S.C.

C. Review Judgment of 12-11-89,Columbia, S.C. Review 4-12-90 Order Denial 3:88-450-16

D. Review U.S. Court of Appeals, 90-2435 Appellants response & exhibits,100 PAGES TT. Financial hardship only 100 pages sent VA. **ALERTING COURTS** OF THE **IRREGULARITIES** & Errors & **Tampered Exhibits** concealment sent VA. SEPT.11 & 14 1990 Table of Contents I & II.

E. Review Informal Brief of Appellees for Misrepresentations & Review all exhibits.

F. Review U.S. Court of Appeals 90-2435 request for Rehearing FRAP 40 & BANC.35. The dissmissal received 11-24-90 & responded post marked 12-2-90 **(TIMELY)**.The reason for this request is to show that the petitioner is a victim of the malicious abuse of the judicial system which resulted in a violation of petitioner's human rights, Constitutional Rights of the 1st & 14th amendments, and irregularities at the trial & exhibits tampered.

OPINIONS BELOW AND JURISDICTION

The U.S. District Court, S. C., Cola.,Division 3-88-450-16. Zeppeiro vs Seaman & Graham P.A.- JUDGMENT OF 12-11-89 (APPENDIX C)

The U.S. District Court, S.C.,Cola, Division 3:88-340-16 Zeppeiro, Plaintiff Pro Se party. Order of 4-12-90 from court: ("JNOV") ORDER Denial APPENDIX C-1

The U.S.Court of Appeals VA., 4th Circuit for 90-2435 on 11-19-90 DISMISSED APPENDIX D-1

The U.S. Court of Appeals VA., 4th Circuit for 90-2435 Rehearing in banc. I.O.P. 40.2. Denied Untimely 12-04-90 APPENDIX D-2

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

1st & 14th amendments to U.S. Constitution set forth in APPENDIX E.

STATEMENTS OF THE CASE

1. Joint Exhibit 1 (removal of Security Act of 1933) at the respondents request approved by the court and forgery concealed at the bench & given jury as original. MOTION IN LIMINE (C-5 PG 1 to 20) SEE (B) is not original **A-2** is **original** copy marked **pleadings.** FACTS: This fabricated evidence was presented to the jury to reinforce respondents attorneys false statements to the jury that it was a **loan and note to ECCO Gas Corp. a Calif. Corp. (MISREPRESENTED)** SAYING THEY DID NOT HAVE ANYTHING TO DO WITH THE AGREEMENT BETWEEN MR. ZEPPEIRO & ECCO GAS. See: **C-6 PG 5 LI 17** to **PG 7 LI 14** OF TT.(**CONCEALED** HE **PREPARED** THE INVESTMENT **CONTRACTS** FOR EGDC & REPRESENTED TO PETITIONER AS ATTORNEY & ESCROW AGENT SEAMAN & GRAHAM TRUSTEE PURCHASING 105 OIL WELLS FOR **EGDC INVESTORS**& PETITIONER BE INCLUDED FOR 10% EGDC STOCK, 4 BEST OIL WELLS WORKING INTEREST, SIGNING ESCROW, $500K NOTE FOR EGDC ALONG WITH ECCO & INTERSTATE CORP.SEE: **A** to **A6 EGDC.**

ECCO GAS DRILLING CORP., COMPLETE CONTRACT. THE DEVELOPMENT AGREEMENT TO CONTRACT RE: SECURITY ACT OF 1933 COPY TO JURY AS PLAINTIFFS #20 PAGE 2 FORGERY BY DELETING ON **A2** THE SEC ACT OF 1933. JURY MISLED AND PETITIONER'S CASE MISPLED. Violation of the due process clause of the 14th amendment to U.S.Constitution. Appendix E

2. There has been a prejudicial error on the judges charges to the jury. Page 2 **QUOTE:** (The plaintiff is bringing this suit to recover damages he claims he suffered as a result of the defendants **handling of an escrow fund).** (The plaintiff is asserting **four causes** of action, or claims, against the defendants: (1) negligence, (2) breach of contract, (3) breach of fiduciary duty and (4) fraud. I will instruct you separately on the legal principles governing each of these **four** causes of action.)**FACTS:**5 causes not 4. The 5th cause (**FRAUDULENT INDUCEMENT TO CONTRACT).**

These errors misled the jury and mispled the case. Petitioner's lawsuit 4th district S.C. was a continuation of his original lawsuit in Washington Cty.,Ohio 84-M 80 in which S & G respondents were defendants. S & G let out for lack of jurisdiction due to Seaman perjurious **affidavits** to OHIO 1984. EXHIBITS PLS# 28 & 26 S.C., SEAMAN denying mail, wire, & any legal services to Ohio Corp., Interstate Drilling & Wells Reno, Ohio hereafter (INTERSTATE). Respondents acting in concert with attorneys Paul Bertram, Robert Ellis of OHIO and Woodrow & Gladys Dennings OHIO residence owners of Interstate. SEAMAN & GRAHAM hereafter (S & G) along with attorneys Paul Bertram, Richard Gabriel represented **EGDC** INVESTORS & **CORP.** for the purchase of 105 OHIO wells for EGDC S&G trustee. These attorneys set up the enterprise **TRI-SANDS** PETRO GR. INC. hereafter (TRI-SANDS) a N.C. Corp. President David Albanese & Secretary Gladys Dennings. While acting in concert with attorneys R.Gabriel of

N.C., Paul Bertram & Robert Ellis of OHIO & with Va. attorneys A.J. Albanese & Barbara Mattick with N.C. & S.C. banks & escrows in S.C.,N.C.,VA.,CA.,OH. & N.Y. S & G **negotiated** for the purchase of EGDC 105 wells for the **enterprises** while escrow agents for EGDC Investors. Fraudulent Vesting to Ohio Corp. **INTERSTATE** using the EGDC Investors funds in the S & G escrow. SEE: **B1,C2,3,4,C4A, & C8.** Petitioner has been trying to bring forth for over 7 years that the respondents have been acting in concert by **Concealing Rico** with petitioner's attorneys in S.C., & OH. & other attorneys and requested a GRAND JURY INVESTIGATION for **Criminal , Civil Rico** , CORP. & Escrow frauds. Request the U.S. Supreme Court Investigate conflict of interest of attorneys & judge in Ohio and others involved. I the petitioner DOUGLAS ZEPPEIRO with help of many INVESTORS AND FAMILY have uncovered and have alerted GOVERNMENT AGENCIES & courts in Ohio,S.C., VA. & GA. that over 300 Investors

have been defrauded by the enterprises for $21 MILLION dollars involving **RICO** and still on going by TRI-SANDS Corp. suspended 3-86. The enterprises Indigo Oil and TRI-SANDS of Va. its President David Albanese now located at Fairfax, Va. lawfirm of Albanese & Mattick.

3. **FACTS:** The petitioner's attorneys did not have **consent** from his client and **concealed** the stipulation at the **bench.**SEE: C-6 PG 2 LI 9 Petitioner's attorney guilty of Extrinsic Fraud (468 SW 2d, 160,163). On 8-14-89 Dr. Wayne Lockhart evaluated the petitioner and his report & expert testimony was to be used at trial. The Doctors report was given to respondents by the petitioner's attorney who breached his fiduciary duty & trust to his client by giving his clients confidential report. The doctors report was not given to petitioner until 4 months later & evidenced deposition taken of Doctor & Dr. report of 8-21-89 addressed to Michael Montgomery for

Douglas Zeppeiro was evaluated at your request to determine what, if any emotional damage he sustained as a result of being victimized in a fraudulent investment scheme. The stresses of being **defrauded** and losing his assets have taken a **toll emotionally.** He feels discouraged because the **government** does very little to help individuals in his circumstances. The belief that he can eventually receive justice through the courts is the driving force which has kept him going. In my opinion there is a direct casual relationship between his current condition & being **defrauded.** I feel his condition may further deteriorate if he has to sell his home. Deposition taken 10-2-89 & the report given to Zeppeiro 12-4-89 **Concealment.**

4. FACTS: The petitioner's constitutional rights were violated on just having **4 counts** presented to the jury for their verdict. Petitioner's case had 8 causes of action. The start of trial had 5 causes of action intro-

duced by petitioners attorneys. The fifth being " **FRAUDULENT INDUCEMENT TO CONTRACT.**" On the 4-12-90 order the court stated that the court instructed the jury on **fraudulent inducement to contract** as part of its charge on common-law fraud SEE: Appendix C 1 page 16. On the judges charges FRAUD (SEE: page 9 & 10) QUOTE: (Next I instruct you on the law concerning the plaintiffs claim for fraud. The plaintiffs fraud claim seeks to recover for fraud, for **fraud in the inducement** & for constructive fraud.) Informal Brief of Appellees page 2. The **respondents on 90-2435 VA. misrepresents** that the jury was presented with 5 counts for their verdict. The **fifth** count being **constructive fraud.** NOTE: There was only a verdict on **4 counts** given by the jury. Respondents stated to court of appeals all 5 counts in favor of appellees. FACTS: The reason for not presenting the petitioner's 5th is that FRAUDULENT INDUCEMENT TO CONTRACT has to do with the nature of the contract or

document signed. The Petitioner's EGDC Investment contract was prepared by respondents Seaman & Graham P.A. who represented to be attorneys and escrow agents for INVESTORS to ECCO GAS DRILLING CORP. (EGDC). A contract is consensual relationship based on the consent of the parties to being bound by its terms. If petitioner was allowed a fair trail he could show by a PREPONDERANCE OF EVIDENCE that the respondents breached the contract, fiduciary duty and were guilty of fraudulent inducement to contract & of counts 6,7,8 & Martin Meadows defendant were dropped by a prejudicial error. Petitioner's case was mispled and jury given improper instructions and the petitioner did not have a fair trial in violation of the 14th amendment. SEE: APPENDIX E

5. The judges charges to the jury on fraud 9,10 & 11. FACTS: The court made a prejudicial error and misled the jury QUOTE: Plaintiffs fraud claim seeks to recover for fraud,

fraud in the inducement & for **constructive fraud.** FACTS: Petitioner's 4th count was for fraud & the **5th** was **FRAUDULENT INDUCEMENT TO CONTRACT.** Jury misled that constructive fraud was a claim. Petitioner's **witnesses** and his **material facts** that he was **prohibited** from **introducing** to the jury at trial for their verdict would have proven that respondents guilty of actual fraud on all 8 counts on case 3 88-450-16 creating a failure of justice & a violation of the (1st) & (14th) amendments.

6. The petitioner's complete **ECCO GAS DRILLING CORP.** INVESTMENT CONTRACT was not presented to the jury. FACTS: ON THE ORDER OF 4-12-90 denying the petitioner a new trial, court made a prejudicial error. SEE: APPENDIX **C 1 page 5.** QUOTE 2 documents relating to the loan and escrow arrangements were introduced at trial. The first is a ("Term Loan Agreement") (Loan Agreement"), date Sept **19,** 1983 and purporting to set out the terms of a loan by

the plaintiff to Ecco. Joint exh. 1. SEE: APPENDIX B FACTS: This exhibit court allowed respondents to materially alter at trial and was concealed from the petitioner and presented the jury as petitioner's original contract. The SEC Act of 1933 was deleted presenting **fabricated evidence** to the jury representing it as a loan when it was an **investment** in a security giving the investors working interest in choice of the best 4 oil wells of 105 wells being purchased for **EGDC.** SEE : **A-5** ECCO GAS DRILLING CORP. SCHEDULE A. The court states the term loan is dated (9-**19**-83) creating a prejudicial error because the escrow agents investors contracts reads (9-**9**-83.) The respondents fraudulently pre-released funds prior to close of escrow and signed escrow prior to petitioner's funds placed in escrow and concealed the material facts & exhibits of fraudulent vesting to **INTERSTATE** and not to **EGDC.** QUOTE: the second document is a escrow agreement bearing the same date as the loan

agreement and signed by the plaintiff, **Seaman** and an agent of ECCO. (Joint Exhibit 2) SEE: APPENDIX **A 4** for **date** and conditions of escrow and purchaser & seller have **entered** Development & Term Loan Agreement in contract. The court misled the jury stating their were 2 documents and it was a loan. Petitioner's complete EGDC Investment contract contained 6 documents and was prepared by the respondents. SEE: (**A TO A6**) The **EGDC** contract contained: 1st (A) EGDC letterhead to participant, **A2** Term Loan evidencing the SEC ACT of 1933, **A3** Development agreement evidences the SEC Act of 1933, **A4** Escrow agreement, **A5** **EGDC** schedule **A** which references 4 best of 105 wells will be selected following closing of escrow. Showing **EGDC** S.C.,N.C.,OHIO, & CA. OFFICES, PHONE ETC. **A6** **EGDC** schedule **B** references the collateral 9 oil wells & gold contract pledged for EGDC. Material Facts Concealed **EGDC** SCHEDULE **B** collateral was same **oil wells** pledged to ECCO Gas Investors in

CA., ESCROWS 1 to 7. and same collateral never assigned to EGDC INVESTORS but passed on to **Robert Ellis** trustee Ohio attorney fraudulently. These wells also in litigation & petitioer alerted Seaman prior to sending his $50K funds. S & G . Meadows, Albanese, Ellis, & others, in S.C.,CA., N.C. & VA. escrow frauds.

7. The respondents represented EGDC as Ohio Corp. consisting of merger of ECCO GAS a Colo. Corp & Interstate Drilling & wells an Ohio Corp. The respondents using their office while escrow agents for **EGDC** Investors negotiated to acquire the 105 oil wells in Ohio for the FRAUDULENT ENTERPRISES, **INTERSTATE** DRILLING, Ohio and on to **TRI-SANDS** PETRO GROUP a N.C. Corp. Tri-Sands Petro as of 1-30-90 still selling and receiving EGDC income from the wells and Corp. suspended 3-12-86. These wells are rightfully EGDC Investors which were bought with **EGDC funds** in the S & G escrow that were defrauded & diverted by those

for the enterprises **INTERSTATE & TRI-SANDS** CORP. Respondents S & G and their esquire Dana Davis acted in concert with Martin Meadows former employee of **A. G. Edwards** using the offices,stationery,mail & phones of S & G and **A.G. Edwards** S.C. offices. S & G along with Meadows working with Tri-Sands, David & A.J. Albanese & Richard Gabriel and Woodrow & Gladys Dennings of INTERSTATE including Paul Bertram & Robert Ellis etc. The following exhibits shows respondents involvement & divided agency roles. SEE: C 8 MEMO from Dave Albanese President of TRI-SANDS RE: purchasing of 105 wells and **funds** showing respondents and others involved. On C 8 **2.** Initial deposit of **$262,500** for **9-12-83.** FACTS: THESE ARE **EGDC** FUNDS IN S & G ESCROW. **8.** COLLATERAL LOAN REPAYMENT ? MARCH 14,83 ? Letterhead show **EGDC** N.C. address & phone and 00000224 was materially altered by **deleting TRI-SANDS** NAME AND GIVEN TO PETITIONER BY RESPONDENTS ATTORNEYS 1988. SEE **C-4** Exhibit 15 from petitioner's

Ohio lawsuit shows funds laundered in the S & G escrow account. Check shows $2K retainer for S & G and wire transfer $30,500 for MNR & OHIO DRILLING. These funds were diverted for the ENTERPRISES INTERSTATE & TRI-SANDS. SEE: C-2 PAGE 2 RE: ECCO GAS-ROBT. ELLIS 5. FACTS: SHOWS COLLATERAL WELLS WENT TO ELLIS & $25,500 OF S & G CONSPIRACY FRAUD AND CONTRACT. Petitioner requested DEC. 4, 1989 to speak to the judge in front of the jury to acknowledge the contracts, monies & EGDC corp.showing RICO.SEE: C-5 PG 21 to C-5 PG 26. S & G LETTER (C-3) DATED 11-9-83 FRAUDULENTLY REPRESENTED THAT THE GOLD COLLATERAL was for the TRI-SANDS INVESTORS. This was the EGDC INVESTORS collateral. Concealed and used as Joint 9 at trial giving fabricated evidence to the jury. SEE:(C-4A) is the letter from Prine to A.J. Albanese attorney 12-7-84. Referencing the same 105 wells that were purchased for the enterprises with EGDC funds also relates to: (1) the collateral obligation

(2) transfer of wells **fraud.** **(3)** payment to A.J.Albanese etc. **(4)** I WILL DEAL WITH **ZEPPEIRO** AS I SEE FIT. This shows respondents involvement INTERSTATE RICO. See:**C-2,3,4,4A,8 & D** PAGES 9, 10 & 11. RICO HAS BEEN CONCEALED IN THE COURTS IN S.C. & OHIO BY RESPONDENTS & PETITIONER'S ATTORNEYS ACTING IN CONCERT.

8.The jury was presented with fabricated facts & altered exhibits concealed from petitioner. SEE:**A 3** pg 2 labeled plaintiffs 20 for trial given jury from 10-5-88 deposition **forged** by deletion of SEC.Act of 1933 at 7. SEE:**D-3**THE AGREEMENTS : TERM LOAN, ESCROW & DEVELOPMENT. copy to the jury reads **ECCO GAS** and copy to petitioner reads **ECCO GAS DRILLING.** Petitioner's attorneys misrepresented the chart THE AGREEMENTS by altering copy for the jury & client as follows: 1. Term loan was $50,000 investment giving working interest in 4 oils being purchased for EGDC as investment in a security. 2. ESCROW parties refer to **A 4**

SELLER & PURCHASER HAVE **ENTERED** IN TO DEVELOPMENT AND TERM LOAN AGREEMENTS AND WELLS TO BE **OWNED** BY SELLER. ECCO GAS CORP. SELLER, DOUG ZEPPEIRO **PURCHASER** & lawfirm of **SEAMAN & GRAHAM** as escrow agents. Concealment of **EGDC** schedule **A** and **EGDC** schedule **B (A5-A6)**. Development Agreement **Altered A3.** Jury misled it deals with drilling & development of new wells.**FACTS:** These were existing wells and giving **EGDC &EGDC INVESTORS** not **ECCO GAS** percentage working interest under SEC Act of 1933. JOINT EXHIBIT 3 for trial collateral % was misrepresented and should have included the collateral agreements which were concealed and forged and the material facts that the Cecil Pottmeyer well was to give 30% working interest and only **23.75%** existed.**A6**
The concealment of collateral agreement misrepresented and altered copy at the 8-18-87 deposition of Seaman mislabeled plaintiffs #10 by respondents attorneys S.C.& copy switched. Jury led to believe there were only 2 docu-

ments a term loan & escrow. FACTS: There were 6 **DOCUMENTS** in the petitioners **EGDC** contract. SEE:**A to A6**. The end result of the trial the respondent told the jury that the collateral was the funds. Misrepresentation the collateral was the 9 oil wells and gold contract being held by the respondents. The petitioners $50,000K funds in the SEAMAN & GRAHAM escrow were the monies that purchased the wells. The collateral was not the funds as stated by the respondents to the jury. SEE: **C 1 page 12** Respondents attorney MS. MCWILLIAMS: QUOTE: HE HAS NOT BREACHED THE ESCROW AGREEMENT. HE DID EXACTLY WHAT THE ESCROW AGREEMENT CALLED FOR HIM TO DO, AND HE HAD NO DUTY TO RECORD THE COLLATERAL. SEE:(**C-6 PG 6 LI 25**>) QUOTE: NOW. THE PLAINTIFF HAS ALLEGED A BREACH OF FIDUCIARY DUTY, WE SUBMIT THE EVIDENCE WILL SHOW THAT THERE WAS NO BREACH OF ANY FIDUCIARY DUTY. THE DAMAGE TO THE PLAINTIFF WAS THE FAILURE OF ECCO GAS TO REPAY. AND AS I SAID, THROUGH WHATEVER REASONS, TOTALLY UNRELATED TO

THE LAW FIRM OVER IN S.C.,THE CORPORATION OUT IN CALIF. DIDN'T PAY IT'S DEBT. SEE:(C-6 PG 5 LI 17 to C-6 PG 7 LI 14) The evidence the petitioner was prohibited from using were material facts proving respondents involvement in an Interstate Conspiracy involving respondents attorneys & petitioner's attorneys in Ohio & South Carolina.

9. The petitioner alerted and gave rise to U.S. Court Appeals Va. by mail & 4 phone calls August, & Sept. 1990. On 9-11-90 Appellant sent Answer to the Informal Brief & Table of Contents I with **100 page of Trial Transcript.** U.S. Court of Appeals in Va. told petitioner cost for copies of exhibits $26.00 and he sent check #795 on Nov.16,1990 and received letter 11-29-90 returning check stating no exhibits apparently in S.C., district court. (C-7 S.C. told petitioner in August 1990 that Va. had exhibits. I went to S.C., 9-14-90 and uncovered switched exhibits and forgery and alerted

U.S. Court of Appeals. On 9-14-90 I sent Exhibits & Table of Contents **II** Request look at EXHIBITS II Va. show **tampering** to the jury and S.C. **switching** of JOINT EXHIBITS, & PLAINTIFFS exhibits at **trial concealed** and **altered**. SEE TABLE OF CONTENTS I- D **PG 9,10 & 11.**

10. There was a prejudicial error on the summary judgment of 9-18-88.(summary judgment given on statute of limitations & **concealed** from petitioner. Petitioner's material facts would have precluded granting of a summary judgment (**Fed. R. Civil P. 56**) on counts **6,** violations of S.C. Securities law,7,violation of Unfair Trade Practices act,8,Racketeer Influenced & Corrupt Organization Act, (RICO). FACTS: Petitioner entered into EGDC INVESTMENT CONTRACT 9-9-83. First lawsuit against respondents was 4-5-84 Ohio, Washington County, 84 M 80 and the 2nd 1987 Lexington Cty S.C. and switching to another attorney and on to Federal Court because of concealment by attor-

neys on both sides. Robert Lincoln of SEC of S.C. recommended Michael Montgomery of lawfirm of Lewis, Lide, Bruce, Potts & Truslow. Court states petitioner filed his complaint on 2-22-88 more than 3 years after the contract date. The above facts prove court was in error. There was an obstruction of justice by dropping the counts & Martin Meadows former defendant Petitioner's constitutional rights violated on the 1st & 14th Amendments. (E.)

11. The 2-24-89 order prejudicial errors: PG 6 QUOTE: 2 documents must be read together to determine the intent of the parties regarding the escrow fund. FACTS: The EGDC INVESTMENT contract contained 6 documents **A to A 6.** The court errored because the Development & Term Agreement are contingent & state in **A-4** escrow that seller & purchaser have **entered** Development & Term Loan Agreement. They were contingent of the escrow agreement that respondent prepared and **signed** before petitioner

sent his **funds** and Seaman dated them 9-9-83 and not as Judge stated 9-19-83 . Funds were fraudulently prereleased **prior** to petitioners funds coming in S & G escrow and fraudulent **vesting** for the enterprises not **EGDC.** The judge calls out the 9-19-83 date SEE:**C-1 pg** 5 The petitioner's $50,000 was the monies place in the S & G escrow account. Page 4 of 2-24-89 order Quote: The defendants have **denied** any mishandling of the escrow account maintaining that under the written agreements the escrow fund was to consist **not** of **money** but of the property listed in schedule of the term loan agreement. The respondents misrepresented **EGDC** schedule **B** as the **funds** when in fact it is the **collateral** being the 9 oil wells & gold contract See: **A-6.** Page 2 of 2-24-89 order footnote by court states the plaintiff **denies** he was a party to this agreement. (Court refers to $50,000 and the plaintiff to become **owner** of a percentage of interest in 4 certain oil wells identified on schedule **A**

SEE: **A-5** (Also as stated to be purchased or presently owned by the **corp.SEE A 4 2nd par.**) and that each loan of $50,000 translate into 40% **interest** in one of the above referenced wells or 10% interest each of 4 referenced wells. Finally, the loan agreement states as collateral given to secure the loan of the above referenced amounts ECCO GAS CORP. hereby pledges the property listed on schedule B appended hereto and made a part here of. Such property is to be **held** pursuant to an escrow agreement with the lawfirm of S & G. Prejudicial error by the court saying petitioner **denies** being party to this agreement. FACT: When the petitioner sent his $50,000 to S & G escrow for **EGDC contract** he became part of the investment as represented to him. COURT PREJUDICIAL ERROR. All of the funds, stock, collateral, wells **embezzled** and income from the **sale** of the **wells and income** for last 8 years went to the enterprises for **$21** million **RICO** not to **Petitioner, EGDC INVESTORS OR EGDC.**

12. The respondents attorney violated the Motion In Limine order and created a Constitutional tort. FACTS: A motion for a new trial may be granted on the ground that violation of the order constituted an irregularity in the proceedings of the adverse party . **CCP 657 (1)** A mistrial may be declared where the attorneys misconduct has seriously prejudiced an adverse party's claim or defense (c CCP 616 ; Witkin, Calif. Procedure (2d ed), Vol. 4, Trial 130, 162, 166- 169. See **F & F2.** EXCLUSION OF EVIDENCE SEE: **F 3** When the trial court has ruled or clearly intimated that it will receive no evidence of a particular type or class, or on a particular issue, the prejudicial nature of the exclusion of such evidence may be argued on appeal regardless of whether or not an offer of proof was made (see Lawless v Calaway (1944) 24 Cal 2d 81,91,147 P2d 604). Therefore, it appears that an offer of proof will not be necessary for appeal where exclusion of evidence was based on an

order granting a motion in limine. SEE **F4**

13. The respondents attorney did say she made a good faith effort to resolve the matter before filing this motion. Respondents attorneys made a bad faith effort to resolve the matters. The attorneys did this by violating a motion in limine order which created irregularities in the proceedings and seriously prejudiced petitioner's claims violating the 1st & 14th Amendments. Facts: Petitioner was allowed only one witness out of the 12 requested. Petitioner's wife and EGDC INVESTORS who were at trial J.W.Fuller & Jessie Fuller, Scott, Stewart and Thelma Andrews & others were not allowed to testify. The SEC of S.C. expert witnesses Robert Lincoln attorney, & Stan Lewis deputy not allowed to testify & give material facts related to respondents involvement sale of unregistered securities and sales during cease & desists by Martin Meadows & David Albanese who also represented

by S & G to Stan Lewis of the SEC.of S.C. Dr. Wayne Lockhart who was available to testify for the petitioner's claim for **emotional distress.** Joe Hilyer & Martin Meadows of A.G. Edwards and being Meadows as defendant who was dismissed by court error & misrepresented by the petitioner's attorney to the courts & by **exclusion** of **evidence** showing Meadows sold during the cease & desists and petitioners attorney concealed the dated contract of the sale. A.G. Edwards employees would have been questioned and would find the 20 lawsuits involving the same oil wells pledged for collateral on going RICO showing against defendants A.G. Edwards, Ecco Gas & Martin Meadows and Seaman representing Meadows to SEC S.C. for the cease & desists against Tri-Sands. On 8-22-89 respondents attorney offered $15,000 and the petitioner's claim was to recover over 3.5 million dollars had he not been defrauded and not including income of the oil wells and overriding royalty for the **180**

oil wells now involved. Respondents attorney said: QUOTE: I will not attempt to argue liability with you again. However, we believe we would ultimately prevail in any trial of this case and would like to try to end it before trial, if possible. The misrepresentation to the courts of the motion in limine created a failure of justice.

14. The respondents and their attorneys misrepresented the facts in the motion in limine as follows: Quote Robert Lincoln & Stanley Lewis have no personal knowledge of any of the facts in this case; they could be only called as expert witnesses to provide opinions concerning S.C. securities laws as they apply to the facts in the case. No proposition to be proved in the case, however, concerns the securities laws. FACTS: Robert Lincoln & Stanley Lewis have personal knowledge of facts in petitioner's case since 1984. Petitioner-gave Stanley Lewis of S.C. Securities over 250

pages of exhibits of mail, wire, securities, fraud. Stanley Lewis flew to Ohio to testify for petitioner 4-3-87 and the respondents attorney had his deposition transcribed 9-1-87 and suppressed the evidence. Robert Lincoln & Stan Lewis were going to testify as to matters of fact that would be presented to the jury for their deliberation. The EGDC Investors Fuller, Andrews, Scott, & Stewart testimony and their contracts were relevant to our case and to show the investors contracts were misrepresented and some forgery and Investors also signed the development agreements and were victims of same escrow frauds as was petitioner. All were defrauded and collateral oil wells and assets defrauded & diverted including EGDC & ECCO GAS depletion & forming the enterprises and acting in concert and on going predicated acts. Petitioner gave contracts to his attorney to be used at trial for his pleadings and never given to jury Wilson & FULLER EGDC CONTRACT IN S.C.LAWSUIT CONCEALED.

15. The 12-11-89 judgment was a prejudicial error. **SEE C.** The court stated that the action be dismissed on its merits. There were no merits to petitioner case. Petitioner did not receive his legal rights for a fair hearing. Petitioner's attorneys and Respondents attorneys acts of extrinsic & intrinsic fraud acting in concert set up petitioner in kangaroo court (468 SW 2d, 160,163). & the court prejudicial errors affected petitioner's legal rights. Such maybe ground for a new trial and reversal of judgment. **Fed. R. Civil P. 59.** The prejudicial errors by the court affected the trial. The petitioner was set up as follows: 1. Petitioner told he would be allowed to review on the 12-4-89 at 8:30 A.M. certain day of trial for selection of the jury. Fact trial started 12-5-89 at 3:00 P.M. and jury picked 2 weeks prior and concealed questions and selection. 2. Before trial began & concealed from petitioner that a jurist told the clerk she is on the verge of a nervous

break down. See: C-6B PG 1LI 16 TO C-6 PG 2. Court stated I don't want to start the trial with someone who is just so upset that she's not paying any attention to the evidence. Rights to a fair trial violated.

3. Motion in Limine on 12-5-89 at 2:15 to 2:43 P.M. and it's discussion at the bench and concealed from petitioner & court room locked and petitioner waiting for 2:30 P.M. to pick jury and to speak to the court and show the new evidence uncovered. See: C-5 PG 1 to PG 20 This order which was violated by respondents and their attorneys caused irregularities in the trial and knowingly & willfully and with intentional misconduct maliciously abused the petitioner's claims and the judicial system under the color of law. See F,F2

Also there was an erroneous exclusion of evidence. See F 3 & F 4 Petitioner's case mispled and forgery on Joint 1, A3 & PLS #20. Prejudicial errors on the 4-12-90 ORDERS SEE:

C-1 PG 7 2nd parg. The court mentions the

seller and purchaser but fails to mention the third party shown on the escrow agreement being the lawfirm of **SEAMAN & GRAHAM** herein after referred to as escrow agent.(A4) ON PAGE 7 footnote 2 mentions Development Agreement. Fact: The development agreement & term loan agreement (both forged) was a condition of the escrow agreement. See **A-4**. April 12, 1990 ORDER C-1 refer to pages 9 to 15. The discussion by the court stating the question here is whether the parties intended that Seaman P.A. hold the plaintiffs $50,000 loan in escrow. FACTS: The $50,000 was not a loan being held in escrow. It was an investment in a security and respondents were not to release the monies until a perfect escrow. Monies were fraudulently pre-released prior to petitioner's funds sent and breach of contract and fraud in escrow for vesting & RICO. (A to A6) The 4-12-90 order pages 13 & 14 courts prejudicial errors not recognizing the following: There was a defect in the jurys verdict

which resulted in a miscarriage of justice. Verdict on only 4 counts not 5 as presented to jury. Verdict was not supported by substantial evidence only by perjurious statements by the respondents and also respondents attorneys intentional misconduct by lying about the case and prejudicing jury against petitioner . The verdict was reached by improper instructions from the court. The verdict was based upon false evidence which consisted of forged documents & fabricated facts & evidence to the jury which resulted in a Miscarriage of Just ice. Petitioner & respondents attorneys acting in concert to obstruct justice, (18 U.S.C.A.> 1501 et seq.) by hindering petitioner's witnesses from appearing, influencing jurors and preventing petitioner from bring forth his preponderance of evidence needed for his pleadings. Concealed from the jury the respondents involvement in the Inter-State Scam that has been going on for 8 years. This resulted incorrect and deficient pleading for

the petitioner. Rules of FED R CIVIL P 15 permits liberal amendment of incorrect or deficient pleadings.

16. The respondents and their attorneys misrepresented the facts on the Informal Brief of the Appellees to the U.S. Court of Appeals VA. for 90-2435. Petitioner alerted the court and sent TABLE OF CONTENTS I AND EXHIBITS sent timely 9-11-90 & 9-14-90 Table of Contents II the newly found forgery & numerous misrepresentations. Petitioner phoned VA. 4 times and talked to Mr. Montaque & clerks told them of forgery and documents switched from S.C. court files and also noted 8-18-87 collateral agreement plaintiffs #10 from Seaman deposition and this copy mislabeled as plaintiffs and has been altered and copy switched from S.C. court files uncovered 9-14-90 S.C. Petitioner will bring exhibits showing fraud and a failure of justice & mockery of judicial system & involvement under the color of law.

17. Marty Martins testimony (C-5 PG 37 LI-24 acknowledges that respondents were to purchase the 105 oil wells forming a new company called ECCO GAS DRILLING CORP., merger between ECCO GAS & INTERSTATE DRILLING. Marty Martin was to be its president and petitioner Vice President of public relations and each would retain 10 % stock of EGDC. **FACTS:** Refer C-5 PG 37 LI

13> Q HOW ABOUT THE STOCK OF ECCO GAS DRILLING

14 A. WE WERE TOLD THAT--

15 MS. MCWILLIAMS: YOUR HONOR, OBJECTION.

16 THE COURT: **DON'T SAY THAT.**

Violation: 1st amendment **FREEDOM OF SPEECH!** Martin & petitioner worked for EGDC Ohio & CA. Marty Martin not allowed to present testimony that was relevant to petitioner's case. Refer to (C-5 PAGE 33 LI 5 to C-5 PG 36 LI 21) DISCUSSION ON ECCO GAS PROJECT 1 to 6 not allowing his rights again by restricting his testimony of the material facts that the wells in ECCO GAS 1 to 6 are the same wells pledged as collateral for EGDC INVESTORS. (SEE A-6)

The fraud acting in concert & passing those wells to Ohio attorney Robert Ellis & Seaman & Graham not recording wells in Ohio for EGDC Investors. Petitioner's choice as discussed with Seaman the Fred Hockenberry well #2 which was the best well and income of $4000,00 weekly and was to go to EGDC INVESTORS. SEE: (C-5 PG 36 LI 11) Marty Martin received phone call from Seaman at EGDC Ohio office to pick 4 best of the 105 wells for EGDC from Seaman and also discussion of Martin & PETITIONER ZEPPEIRO 10% stock of EGDC. Refer C-5 PG 38 LI 21 to C-5 PG 40. Marty Martin also went with Meadows, Albanese, Denning & JACOBS to Canada for the 105 OHIO oil wells to be purchased for EGDC & discussed Merger of ECCO GAS & INTERSTATE IN TO EGDC AND $500,000K BE RAISED SEE C-5 PG 31 LI 18. TO C-5 PG 32 LI 24 EGDC INVESTORS WERE TO GET 30% RETURN ON INVESTMENT AND FUNDS RETURNED IN 6 MONTHS,13% INTEREST ON MONEY AND FUTURE INCOME.**C-5 PG 39.** MARTIN SPEAKING WITH ZEPPEIRO FROM EGDC OHIO.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for these 3 important reason that petitioner's basic human rights, and basic constitutional rights were violated and the prejudicial errors made in the conduct of the trial prevented petitioner from having a fair hearing constituting a Miscarriage of Justice.

CONCLUSION

For the reasons set forth above, a writ of certiorari should be issued to give petitioner his constitutional rights to a fair trial, a basic constitutional guarantee contained implicitly in the Due Process Clause of the 14th Amendment, to the U.S. Constitution

February 11, 1991

Dated

Respectfully submitted,

Douglas D. Zeppeiro

DOUGLAS D. ZEPPEIRO

PETITIONER PRO SE PARTY

ECCO GAS DRILLING CORPORATION

PLAINTIFF'S EXHIBIT 10 September , 1983

Dear Potential Participant:

Attached you will find two copies each of Term Loan, Development and Escrow Agreements to be utilized in conjunction with the continuing oil development efforts of the corporation in Washington County, Ohio. Please execute the

ages in both sets of the Execu-

s and return them to us. After

ents are appropriately counter-signed, we will return a copy to you for your permanent records. If you have any questions about the materials, please do not hesitate to call me collect at 803 754-9498 or 803 79634. Any funds forwarded to us will be held in escrow pending the closing which should take place on or about September , 1983.

MARTIN MEADOWS Vice President

Enclosures Shows EGDC 4 states address-phone#

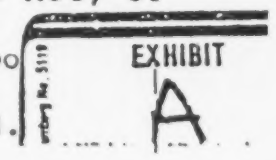
CA.(805)499-5761 OH.(614)373-8586 N.C.299-6949

4949 TWO NOTCH RD, SUITE 215 COL. S.C.754-9498

APPENDIX A

HAND WRITTEN ON PETITIONER,S COPY: Pleadings

The securities evidenced by the within certificate have not been registered under the Securities Act of 1933, as amended. such securities may not be sold, transferred or otherwise disposed of in the absence of an effective Registration Statement under that Act, or evidence satisfactory to the Corpo such registration is not required.



ECCO GAS CORPORATION

TERM LOAN AGREEMENT (PORTION OF 10 PAGES)

Zeppiero assoc. No. LEFT BLANK

$50,000 ARTICLE I

Section 1.01. Ecco Gas Corporation, a corporation organized and existing under and by virtue of the laws of the State of Colorado (hereby promises to pay to Doug Zeppiero Assoc. or registered assigns, on March 12, 1984,(the "maturity Date"), at the principal place of business of the Corporation in the City of Greensboro, County of Guilford, State

*PETITIONER'S ATTORNEY LABELED COPY EXHIBIT A

of **North Carolina** the principal amount appearing in the heading hereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest on the unpaid principal amount hereof, at the rate of 2% above the prime interest rate (as determined by C & S Bank of Columbia, **South Carolina**, on September 1,1983) ,per annum, from the date hereof, payable at said place in like coin or currency on March 12, 1984, ("Fixed Payment Date").

The interests hereunder are part of the total interests given in exchange for monies loaned to the Corporation in the aggregate principal amount of **$500,000.00**, which interests are identical in all respects except for the payee, the principal amounts, and the percentage interest thereof.

The person or persons in whose name the interests hereunder are issued are also the

owners of a percentage of interest in four (4) certain oil wells (identified on **Schedule A** appended hereto and made a part hereof) to be purchased or presently owned by the Corporation. Each loan of $50,000.00 translates into a 40% interest in one of the above referenced wells or 10% in each of the four (4) referenced wells with the percentage of ownership increasing based on the value attached to the individual amounts loaned, for example, a loan of $125,000.00 constitutes a 100% interest in one of the four (4) wells or 25% in each of the four (4) referenced wells to be purchased or presently owned by the Corp. (copy) section 1.02.to end of Section 5.01 not included up to page 8 of 10 pages to term loan.

The below copy from Article VI sect. 6.01. As collateral give to secure the loan of the above referenced amounts, Ecco Gas Corporation hereby pledges the property listed on **Schedule** B appended hereto and made a part hereof. Such property is to be held pursuant to an Escrow

Agreement with the law firm of Seaman & Graham, 6326 St. Andrews road, Columbia, S.C.

Section 7.03 Any controversy arising out of or relating to this agreement shall be submitted to and settled by arbitration pursuant to the rules of the American Arbitration Assoc. as in existence from time to time. The Corp. and the holder hereof shall be conclusively bound by such arbitration.(shown on page 9)

Section 7.05. This agreement shall be deemed to have been issued under, and shall be governed by, the laws of the State of South Carolina in all respects.

IN WITNESS WHEREOF, THE CORP. HAS CAUSED THIS Agreement to be signed in its name by its President or one of its Vice Presidents and its corporate seal to be hereunto affixed and duly attested by its Secretary or its Assistant Secretary as of this ___ day of September, _____1983.

ECCO GAS CORPORATION

By: written Edward S. Jacobs

Its: " President

(CORPORATE SEAL)

ATTEST:

written David A. Albanese

Secretary written (acting Sec Tres

_____

_____

Notary Public My Commission Expires:_____

end of copy and end of Term ends page 10

* MY COPY GIVEN TO MY ATTORNEY OF PETITIONER FOR TRIAL WAS MARKED EXHIBIT A THE ORIGINAL IS WITH THE COURTS IN OHIO case 84-M-80 Washington County , Ohio Court of Common Pleas.pending my appeal hearing of March 7, 1990.

END OF APPENDIX A-2 COPY WAS WRITTEN PLEADINGS

Plaintiffs #20 given to the jury Altered Copy by deletion of SEC.ACT OF 1933 ON PG 2 of A-3

DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this ___ day of September, 1983 by and between _____, hereinafter referred to as "**Participant**", and **ECCO GAS CORP.**, a **Colorado** Corp., with its principal business address being 3407 West Wendover Ave., **Greensboro, North Carolina.**

WHEREAS, the parties to this agreement are in the oil and gas exploration and development business; and

WHEREAS,the parties to this agreement have agreed to develop certain property identified on the Schedule appended hereto, and have consented to do so:

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follow:

1. The parties and other **participants** will be the **owners** of all of the **working interests** in the project developed under this Agreement

PLAINTIFF'S EXHIBIT 20

APPENDIX A-3

*NOTE THIS AGREEMENT CONTAINED 1.TO 7 CLAUSES OF 3 PAGES PAGE 2 TAMPERED EVIDENCE AT TRIAL.

5. THE PARTIES AGREE THAT THEIR RESPECTIVE INTERESTS IN THE VENTURE ARE AS FOLLOWS:

Working Interest prior to and after Payout of original investment to investor:

Ecco Gas Corporation _____ %

Participant --------%

Other Participants ---------%

6. Ecco Gas Corp., or its designees, shall be designated as Operators of all wells drilled under this agreement.

7. The parties agree that the purchase of their interests is not for investment only and is not made with a view to resale. The parties agree that they are working together, as a general partnership.{Trial Tampered DELETED} Interests in the venture have not been registered under the Securities Act of 1933, as amended, or under certain applicable State Securities Acts in reliance upon exeXXXXXXX

* PETITIONER ALERTED SEC GA.,CA., & S.C. 1990.

ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this 9th. day of September, 1983, by and between ECCO GAS CORPORATION, a Colorado corporation (hereinafter referred to as "Seller") and (Doug Zeppeiro Associates) (hereinafter referred to as "Purchaser") and the law firm of SEAMAN & GRAHAM (hereinafter referred to as "Escrow Agent").

W I T N E S S E T H:

~~Whereas~~, Seller and Purchaser have entered into Development and Term loan Agreements whereby Purchaser has loaned money to the seller and Purchased interests in oil wells owned or to be owned by the Seller. Pursuant thereto, Purchaser and Seller desire to establish an Escrow pending closing in accordance with the terms of the respective agreements.

Whereas, Escrow Agent has consented to act as Escrow Agent and to receive and hold the monies in Escrow upon the terms and provisions hereinafter set forth;

JOINT EXHIBIT 2

ECCO GAS
DRILLING CORPORATION

SCHEDULE "A"

The four best of 105 wells will be selected following closing of Escrow. Full descriptions and location maps will be supplied at that time.

The wells are valued at $85,000.00 each. To drill them to their present depth (Ohio shale) today would cost over $260,000.00

Net income from gas and oil production in these wells is expected to be above 30%.Ecco is committed to complete another zone above Ohio shale if they do not.

1200 LAWRENCE DR.,NEWBURY PK .CA. 805 499-5761
ROUTE.1 NEWPORT PIKE, RENO, OHIO 614 373-8586
1011 HAYFIELD LA. GREENSBORO,N.C. 919 299-6949
4949 TWO NOTCH RD.,COLUMBIA, S.C. 803 754-9498

ECCO GAS DRILLING CORPORATION

SCHEDULE "B"

1. Agreement for sale of goods (gold contract for 600 troy ounces of gold.....100%
2. Cecil Pottmeyer well.....30%
3. Well No. 996 BA.....40%
4. Well No.1002 BA.....40%
5. Well No.1001 BA.....40%
6. Well No.1000 BA.....40%
7. Well No. 999 BA.....40%
8. Well No. 998 BA.....40%
9. Well No. 997 BA.....40%
10 Well No.1030 BA.....40%

Copies of gold contract, well leases and location description attached.

1200 LAWRENCE DR.,NEWBURY PK .CA. 805 499-5761

ROUTE.1 NEWPORT PIKE, RENO, OHIO 614 373-8586

1011 HAYFIELD LA. GREENSBORO,N.C. 919 299-6949

4949 TWO NOTCH RD.,COLUMBIA, S.C. 803 754-9498

PRIOR TO TRIAL EXHIBIT APPENDIX A-2 ALTERED. THE DELETION OF SEC ACT OF 1933 & SWITCHING TO JOINT 1 ORIGINAL (APPENDIX B) (FABRICATED, CONCEALED CONDUCT, OBSTRUCTION OF JUSTICE.

ECCO GAS CORPORATION

TERM LOAN AGREEMENT

Zeppiero Assoc. No._____

$50,000 ARTICLE I

Section 1.01. Ecco Gas Corporation, a corporation organized and existing under and by virtue of the laws of the State of Colorado (hereby promises to pay to Doug Zeppiero Assoc. or registered assigns, on March 12, 1984,(the "maturity Date"), at the principal place of business of the Corporation in the

*PETITIONER'S ATTORNEY LABELED EXHIBIT A IS THE (ORIGINAL) MARKED PLEADINGS SEE: APP. A-2 SEE: EXCERPTS OF JURY TRIAL PAGE 11 LINE 11 TO 24 APPENDIX-B IS AN ALTERED COPY--NOT ORIGINAL AS REPRESENTED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH CAROLINA-COLUMBIA DIVISION

Douglas Zeppeiro,Plaintiff, (PRO SE PARTY)

vs. FILED 3-27-90

SEAMAN & GRAHAM P.A.,

ROBERT SEAMAN III,

MARTIN MEADOWS, DEFENDANTS,

Request & Pray to Courts for a Mistrial on 3 :88-450-16 DUE TO PREJUDICIAL ERRORS & OBSTRUCTION OF JUSTICE BY WITHHOLDING MOTIONS & EVIDENCE CREATING INSUFFICIENT EVIDENCE AT TRIAL BY ATTORNEYS FOR THE PARTIES WORKING TOGETHER IN THE CONCERTED ACTS & CONDUCT. PLAINTIFF AT BENCH JURY NOT PRESENT WHEN MATERIAL FACTS PRESENTED OF FUNDS OF ESCROW MISREPRESENTATIONS,FUNDS & CONTRACTS CONCEALED,FORGERY SUBORNING RICO NOT JUSTICE.

APPENDIX B 1

UNITED STATES DISTRICT COURT

ENTERED 12/11/89

DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

DOUGLAS ZEPPEIRO, JUDGMENT IN A CIVIL CASE

Plaintiff,

V. CASE NUMBER:3:88-450-16

SEAMAN & GRAHAM, a South Carolina Partnership,

Defendants.

[XX] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED

that the plaintiff, Douglas Zeppeiro,take nothing that the action be dismissed on the merits, and that the defendants, Robert E. Seaman, III., P.A., and Seaman & Graham, a South Carolina partnership, recover of the plaintiff their costs of action.

DATE December 11,1989 Clerk ANN A. BIRCH

Signed (BY) Deputy Clerk Becky Wilson

APPENDIX-C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

ENTERED
4-12-90

CIVIL ACTION NO: 3:88-450-16

DOUGLAS ZEPPEIRO, Plaintiff, v. ROBERT E. SEAMAN, III, ROBERT E. SEAMAN, III, P.A., and SEAMAN & GRAHAM, a South Carolina Partnership, Defendants.	ORDER

This matter is before the Court on the plaintiff's motion for judgment notwithstanding the verdict ("JNOV") or, in the alternative, for a new trial and on the plaintiff's request for a mistrial. For the reasons set forth below, the motion and the request are denied.

Defendant Robert E. Seaman, P.A. ("Seaman, P.A.") is a professional associa-

tion, formerly engaged in the practice of law. Defendant Seaman, P. A. practiced law as a general partner, along with Bothwell Graham, P.A.,[1] in Seaman & Graham ("Seaman & Graham), a South Carolina partnership. Defendant Robert E. Seaman, III ("Seaman") is a lawyer and an agent of seaman, P. A.

In 1982, Seaman & Graham agreed to act as escrow agent in connection with loan arrangements between Ecco Gas Corporation Ecco and various lenders, including the plaintiff. The plaintiff brought this action seeking damages allegedly caused by Seaman & Graham's mishandling of the escrow fund and asserting cause of action for (1) breach of contract (first cause of action), (2) breach of fiduciary duty (second cause of action), (3) negligence (third cause of action), (4) fraud (fourth cause of action), (5) fraudulent inducement to

---

[1] Bothwell Graham P.A. was initially a defendant in this action but the plaintiff"s claims against it were dismissed with prejudice by a consent order filed May 3, 1989.

contract (fifth cause of action), (6) violation of the South Carolina securities laws (sixth cause of action), (7) violation of the South Carolina Unfair Trade Practices Act (seventh cause of action) and (8) the Racketeer Influenced and Corrupt Organizations Act (eighth cause of action). By order filed September 16, 1988, the Court granted the defendants' motion for summary judgment on the sixth, seventh and eighth causes of action. The remaining causes of action were tried before a jury which returned a verdict for the defendants. Following trial, the plaintiff's lawyer filed a timely motion for JNOV or new trial along with a motion to be relieved as counsel. By order filed January 23, 1990, the Court relieved plaintiff's counsel and gave the plaintiff thirty days in which to inform the Court of the identity of new counsel. The plaintiff subsequently notified the Court he desired to proceed pro se and, by order filed March 7, 1990, the Court granted the plaintiff

twenty days, until March 27, 1990, to submit any additional written materials in support of his motion for JNOV or new trial. The plaintiff responded by filing a "Request and Pray to Courts for A Mistrial" on March 27, 1990. The Court now addresses separately the grounds raised (1) by the plaintiff's counsel in support of JNOV, (2) by the plaintiff's counsel in support of a new trial and (3) by the plaintiff himself in support of a mistrial.

II

First, the Court addresses the arguments raised by the plaintiff's counsel in support of the motion for JNOV. The plaintiff's counsel asserts that the plaintiff is entitled as a matter of law to a verdict in his favor on the second cause of action for breach of fiduciary duty. On a motion for JNOV, the Court must consider the record as a whole and in the light most favorable to the party opposing the motion and, if there is

substantial evidence opposed to the motion, that is, evidence of such quality and weight that reasonable and fair minded men in the exercise of impartial judgment could reasonably return a verdict for the nonmoving party, the motion should be denied, Wyatt v. Interstate & Ocean Transp. Co., 623 F. 2d 888, 891 (4th Cir. 1980). Viewing the evidence in the light most favorable to the defendants, the Court concludes that there is substantial evidence to support the jury's verdict on the cause of action for breach of fiduciary duty. Accordingly, the motion for JNOV is denied.

Two documents relating to the loan and escrow arrangements were introduced at trial. The first is a "Term Loan Agreement" ("Loan Agreement"), dated September 19, 1983, and purporting to set out the terms of a loan by the plaintiff to Ecco. Joint Exh. 1. Under that agreement, Ecco "promises to pay to Doug Zeppeiro [sic] Assoc. or registered assigns, on March 12, 1984,... the principal

amount appearing in the heading hereof,... and to pay interest on the unpaid principal amount hereof, at the rate of 2% above the prime interest rate...on March 12, 1984." Id. art. I, S 1.01, at 1. The amount in the document's heading is $50,000. Id. at 1. The Loan Agreement also provides for the plaintiff to become owner of "a percentage of interest in four (4) certain oil wells (identified on Schedule A appended hereto and made a part hereof) to be purchased or presently owned by the Corporation" and that "[e]ach loan of $50,000.00 translates into a 40% interest in one of the above referenced wells or 10% interest in each of the four (4) referenced wells." Id., at 2. Finally, the Loan Agreement states: "As collateral given to secure the loan of the above referenced amounts, Ecco Gas Corporation hereby pledges the property listed on Schedule B appended hereto and made a part hereof. Such property is to be held pursuant to an Escrow Agreement with the law

firm of Seaman & Graham . . . ." Id. art. VI, S 6.01, at 9.

The second document is an "Escrow Agreement, bearing the same date as the Loan Agreement and signed by the plaintiff, Seaman and an agent of Ecco. Joint Exh. 2. The Escrow Agreement, which identifies Ecco as "Seller" and the plaintiff as "Purchaser", recites that the two parties "have entered into Development and Term Loan Agreements whereby Purchaser has loaned money to Seller and purchased interests in oil wells owned or to be owned by Seller." Id. at 1.[2] The agreement also provides for an escrow account to be established "[p]ursuant thereto" and for Seaman & Graham to "receive and hold the monies in Escrow." Id. The agreement further recites: "Prior to the closing of the Term

---

[2] The evidence indicated the parties contemplated but never entered into a "Development Agreement."

Loan and Development Agreements, Purchaser has delivered to Escrow Agent, and Escrow Agent hereby acknowledges the receipt of monies(the 'Escrow Fund') contemplated in the Term Loan and Development Agreements by and between Purchaser and Seller." Id. S 1, at 2. Finally, the Escrow Agreement provides: 3. DELIVERY OF ESCROW FUND TO THE PURCHASER. Upon the valid and complete satisfaction of one of the two following conditions, escrow agent shall deliver to Seller the Escrow Fund:

(a) Upon the failure of Purchaser to perform, in any material respect, the obligations and duties under the aforesaid Term Loan and Development Agreements.

(b) Upon the complete and satisfactory closing of the Term Loan and Development Agreements.

Id. S 3, at 3.

The plaintiff's counsel asserts the plaintiff was entitled to judgment as a matter of law on his cause of action for breach of

fiduciary duty. Specifically, the motion asserts the defendants were under a fiduciary duty as escrow agents to hold the $50,000 deposited by the plaintiff until satisfaction of the conditions in the agreement, that is, until either the plaintiff breached his duties under the loan agreement or until the Development and Loan Agreements were closed, and that Seaman & Graham breached that duty as a matter of law by disbursing the money prematurely. The plaintiff previously raised the same argument in support of a summary judgment motion denied by order dated February 24, 1989, and in support of a directed verdict motion denied at the close of evidence at trial. The Court rejects this argument now for the same reasons that it denied the earlier motions.

The critical question here is whether the parties intended that Seaman, P.A. hold the plaintiff's $50,000 loan in escrow. The intent of the parties must be ascertained

first from the language of their written agreements. United States v. Chester Heights Assocs., 406 F. Supp. 600 (d.s.c. 1975); Gilstrap v. Culpepper, 283 S.C. 83, 320 S.E.2d 445 (1983); Martin v. Carolina Water Serv., 280 S.C. 235, 312 S.E.2d 556 (Ct. App. 1984). As noted above, Seaman & Graham acknowledges in the Escrow Agreement that it had received "monies (the 'Escrow Fund') contemplated in the Term Loan and Development Agreements by and between the purchaser and the seller." This provision supports the plaintiff's contention that Seaman & Graham was told to hold his $50,000 loan in escrow subject to the conditions of the Escrow Agreement. Nevertheless, because the quoted provision expressly refers to the terms of the Loan Agreement for identification of the escrow res, the provisions of the two documents must be read together to determine the intent of the parties regarding the escrow fund. See Twiggs v. Williams, 98 S.C. 431, 82 S.E.2d 676 (1914);

Barton v. Travelers Ins. Co., 84 S.C. 209, 66 S.E. 118 (1909); cf. Atlantic Am. Life Ins. Co. v. Peoples Life Ins. Co. of S.C., 267 F. Supp. 441 (D.S.C. 1967). The loan agreement recites that ECCO promised to repay the plaintiff the amount of $50,000, with interest, but it says nothing about the money being held in escrow. The document does, however, provide that the property listed in Schedule B is to be held pursuant to an escrow agreement with Seaman & Graham. Thus, when read together the two documents create an ambiguity concerning precisely what was to be held in escrow. The terms of the Escrow Agreement suggest, as the plaintiff has maintained, that the escrow fund was to consist of money, while the language of the Loan Agreement suggests, as the defendant Seaman testified, that the collateral described in the Schedule B was to

constitute the contents of the fund.[3]

The verdict shows that the jury resolved this ambiguity in favor of the defendants, accepting the testimony of the defendant Seaman that the escrow fund was to consist of the collateral rather than the loan.[4] Because the jury's finding is supported by substantial evidence, namely the testimony of defendant Seaman, the Court denies the motion for JNOV.

---

[3] This ambiguity is compounded by the Escrow Agreement's delivery provision. See Joint Exh. 1 s 3, at 3, quoted supra page 5. That provision contradictorily identifies both the plaintiff and Ecco as the party to whom the escrow fund should be delivered upon of either two specified conditions. In addition, the two conditions set forth in that provision are inconsistent. The first condition, failure by the plaintiff to perform his obligations under the Loan and Development Agreements, should trigger delivery of the collateral to Ecco, while the second condition, closing of the Loan and Development Agreements, should trigger delivery of the $50,000 loan to Ecco.

[4] At the trial defendant Seaman attributed the ambiguities to Seaman & Graham's inartful adaptation of its standard escrow agreement form for use in this particular transaction.

III.

Next, the court addresses the arguments by the plaintiff's counsel in support of a new trial. The Court should set aside the verdict and grant a new trial, even though it is supported by substantial evidence, if the verdict was reached under improper instructions or if the Court is of the opinion that the verdict is against the greater weight of evidence or it is based upon evidence which is false or will result in a miscarriage of justice. Wyatt, 623 F.2d at 891-92. Because the court finds no such defect in the jury's verdict, the motion for a new trial is denied.

The plaintiff's motion seeks a new trial on the ground that the verdict resulted from inflammatory evidence introduced when the defendant's lawyer attempted to impeach the plaintiff with deposition testimony in which the plaintiff used a racial slur.

While the Court does not condone the defense

lawyer's introduction of that testimony without notice to either the Court or opposing counsel,[5] it nevertheless concludes her conduct does not warrant a new trial. The cited testimony occupied but a short moment during a lengthy trial and no subsequent reference to the offensive language was permitted. Under the circumstances, the Court does not believe that the deposition excerpt influenced the jury's verdict.[6] For these reasons, the Court denies the motion for a new trial.

IV.

Finally, the Court addresses the plaintiff's request for a mistrial. Although the plaintiff sets forth numerous charges of error or wrongdoing, the Court finds only the following are relevant to his entitlement to

---

[5] Had defense counsel so advised the Court, it would have had the opportunity to rule on the admissibility of the testimony.

[6] The Court notes that the plaintiff's counsel declined a curative instruction offered by the Court.

a trial:[7] (1) introduction of the impeachment testimony previously addressed; (2) the Court's exclusion of testimony by securities experts and the redaction of the "Term Loan Agreement" to exclude mention of securities; (3) exclusion of testimony by other investors in Ecco; and (4) the Court's failure to submit to the jury the plaintiff's fifth cause of action for fraudulent inducement to contract. The Court finds none of these grounds persuasive.

The first ground has been adequately considered, and rejected, above. As for the second ground, the Court believes it properly excluded the evidence concerning securities which, because the court had previously granted summary judgment on the plaintiff's securities fraud claim, was not relevant and might have confused the jury. The Court further

---

[7] Many of the arguments address previous orders of the Court which, although appealable, do not constitute grounds for a mistrial.

rejects the third ground because the proffered testimony by other investors was not relevant to the plaintiff's agreement or the defendants' alleged breach of duties owed the plaintiff and, if admitted, might have confused or misled the jury. Finally, the fourth ground is meritless because the Court in fact instructed the jury on fraudulent inducement to the contract as part of its charge on common-law fraud.

For the reasons set forth above, the Court denies the plaintiff's motion for judgment notwithstanding the verdict or for a new trial and his request for a mistrial.

IT IS SO ORDERED.

(signed)
KAREN LeCRAFT HENDERSON
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina

April 11, 1990

S & G Escrow Agent concealed EGDC Contracts tney prepared including term,development,& escrow signed by investors. They breached contracts & some were forged dated 9-9-83. $500 K for EGDC not raised but $262,500 K as told to tne Honorable judge Karen Hendersen by the petitioner & concealed from the jury plaintiffs exhibits & MATERIAL FACTS. S & G gave fraudulent vesting to Ohio enterprise & played divided agency role involving mail wire, Security, Escrow, corp fraud. Prior to petitioner funds sent monies were pre-released & concealed 6 months. Fraud of S.C. to Ohio,VA.,CA.,N.C.& N.Y. ESCROWS & CORP & SECURITIES FRAUDS INVOLVING 300 investors $15 MILLION & 190 oil wells & oil income. ECCO GAS DRILL.,CORP. INVESTORS $$ IN (S & G) ESCROW.

1. J. SCOTT, S.C. $50 K EGDC & put $ ECCO GAS, & TRI-Sands. SAME 105 OIL WELLS for EGDC & COLLATERAL fraud VA.,CA.,S.C., & N.C.ESCROWS.

2. B.W. Smith Corp., MS. $50 K. RICO RELATED INVOLVED IN TRI-SANDS S.C., N.C., VA. ESCROWS & TRI-SANDS INC.& MORTGAGE FUNDING OF MS.& VA.

3. Doug Zeppeiro & Assoc., $50 K in S & G escrow, 10% EGDC stock, V.P. & $42 K yearly. Induced to invest $65 K by A.G. EDWARDS AGENT MARTIN MEADOWS 6-1-83 for 325 ozs. GOLD FRAUD. PETITIONER'S ATTORNEYS CONCEALED RICO SALE OF EGDC WELLS TO S.C. INVESTOR DURING CEASE & DESISTS IN S.C. GIVEN TO PETITIONER 4-15-90.

4. J. Fuller, S.C. 40 K. SUED S & G WENT TO EGDC OFFICE S.C. & LATER NAME SWITCHED TRI-SANDS PETRO & FRAUD SUPPRESSED AT TRIAL.

5. ECCO GAS CORP. Robert Ellis, Trustee Ellis and Ellis Co., L.P.A Marietta, OHIO, $25,500 K in S & G escrow & same collateral fraudulently taken & recorded Washington CTY., OH. VOL 252 page 730 RICO on 1-12-84. ATTORNEY Ellis REPRESENTS 92 INVESTORS & like S & G divided agency role acting in concert with enterprises in S & G escrow & taking of 105 wells involved with 17 attorneys & Ohio judge conflict of interest on Vol. 250 PG.360, OH.

6. L.Wilson $12,500 K. IN S & G escrow S.C. & ECCO Gas RICO CA. SAME OIL WELLS FRAUD & SUED OH.,& S.C. & OHIO ATTORNEY SAME AS petitioner involved in RICO. wilson, Walker,& Andrews S.C. attorney involved with RICO also 24 S.C. lawsuits with attorneys in S.C. involving Plaintiffs & Defendants attorneys in S.C. & Ohio. acting in concert.

7.L. Walker $12,500 K. SUED OH.,S.C. & INVESTED ECCO GAS CA. ESCROW SAME WELLS RICO ANDREWS,S.C. & WILSON , WALKER OR., Used same S.C. Lawfirm. withheld complete EGDC contract.

8. UNKNOWN S.C. (STEWART CONTRACT CONCEALED $12 K. SUED S.C. & VICTIM OF CA. & S.C. RICO. STEWARTS S.C. ATTORNEY SAME AS PETITIONER'S.

9. T Andrews, S.C., $10 K. SUED A.G.EDWARDS & NOT RESPONDENTS WHO RECEIVED FUNDS RICO Victim. ANDREWS CASE BEING MISPLED IN S.C..

S E A M A N & G R A H A M

ATTORNEYS & COUNSELORS AT LAW

6326 ST.ANDREWS ROAD

COLUMBIA, SOUTH CAROLINA, 29210

November 9, 1983

GENERAL QUARTERS MINING CORPORATION

10645 Chandler Blvd.,N.H.,CALIF.

Re: GOLD CONTRACT *JOINT EXHIBIT # 9

Dear Sirs,

This is to advise you that the gold contract between Ecco Gas Corporation and your organization has been assigned to Robert E. Seaman III as escrow agent under a collateral loan agreement in favor of the investors of Tri-Sands Petro., Gr.,from Philip Allen of Ecco Gas Corp. dated September 20, 1983. Please be advised that this letter constitutes a formal demand for the delivery of 600 troy ozs. of .999 refined gold in acceptable quality form. Please make such delivery immediately. Sincerely,Robert E. Seaman III

ECCO GAS CORPORATION
1011 HAYFIELD LANE
GREENSBORO, NC 27410

DEFENDANT'S EXHIBIT 14

103

10.7 19 83 66-55 / 531

Y TO THE IDER OF Cash $ 5,500.00

Five thousand five hundred dollars and 00/100 DOLLARS

NCNB National Bank of North Carolina Greensboro, NC 27420

John Ant

"00000103" :053100559: 021264890" 00005500

ECCO GAS Corporation
3407 West Wendover Avenue
Greensboro, NC 27407
(919) 854-2540

DEFENDANT EXHIBIT 15

September 14 19 83 66-55 / 531

TO THE DER OF Robert E. Seaman, III Trustee $ 32,500 00

Thirty-two thousand and five hundred + 00/xx DOLLARS

NCNB National Bank of North Carolina Greensboro, NC 27405

RETAINER - $2,000
MNR + OHIO DRILLING WIRE TRANSFER $30,500

David A. Albanese

:053100559: 021264890" "0003250000"

NOTE EXHIBIT 16 PRINTED #103 & EGDC address

PETITIONERS OHIO LAW SUIT CONCEALED EX.75-13

Mr A.J. Albanese,Attorney at law Dec.7,1984

4041 University Dr.,#301 Fairfax,Va. 22030

Dear Al,

As we both know, our deal has been plagued with problems from the onset. I am talking about the wells, and Woody Denning,more specifically. So here we are in the 11th hour, trying to salvage something that, I feel, can be made to work,but only with tender loving care. Furthermore, as you will recall, I wanted the option to pay the collateral loan holders with **stock & not cash**- now you seem to be talking cash. Additionally, the coast of wells in the area has fallen to $10 K. & not $20 K. which we originally paid. This, of course,was evidenced by **my contract** with the Canadians on the **balance of the wells.** Given the aforementioned, I am prepared to do the following :

(1) To assume the collateral loan obligation. This means I have the responsibility to

negotiate with these people however I see fit.

(2) Transfer of all wells into my name. Item 1. above will become my responsibility when all wells are transferred.

(3) Payment to A.J. Albanese of $33,000 with a note payable to him for $100,000 due on or before eighteen months from closing of this Agreement.

(4) I will deal with Zeppeiro as I see fit.

(5) No other stock or monies will be consideration of this Agreement.

I look forward to hearing from you:

Sincerely

(signed)

Stephen B. Prine

(PETITIONER UNCOVERED 4-28-89 OHIO FRAUD.)

EXCERPTS OF JURY 3:88-450-16

TRIAL TRANSCRIPT (TT) PAGES APPROX. 1-40

MOTION IN LIMINE (C-5 PAGES 1-15) CONCEALED FROM PETITIONER ELIMINATING WITNESSES.

CONCEALMENT OF ALTERING DOCUMENT **C-5 PG.1-15**

PETITIONERS REQUEST TO SPEAK TO COURT OPENLY, RE: RESPONDENTS INVOLVEMENT IN THE CONSPIRACY WITH THE ENTERPRISES. **C-5 PG. 21-26**

PETITIONER COERCED & FORCED BY COURT TO ANSWER NO TO AN UNCOMPLETED QUESTION ON **C-5 PG. 27-30**

JURYS QUESTION TO COURT PETITIONER NOT OFFERED FULL DISCLOSURE. **C-5 PG. 30-32**

MARTY MARTIN EGDC OHIO EMPLOYEE ONLY WITNESS PETITIONER ALLOWED. TESTIMONY REINFORCES PETITIONERS POSITION IN THE EGDC INVESTMENT NOT ALLOWED FREEDOM OF SPEECH. **C-5 PG. 30-40**

VOLUME I TRIAL TRANSCRIPT C/A NO. 3:88-450-16

CONCEALED FROM PETITIONER A JURORS MENTAL STATE AND JURY WAS PRESELECTED **C-6 PG. 1-2**

CONCEALMENT OF STIPULATION BY PETITIONERS ATTORNEYS **C-6 PG. 2**

OPENING MONTGOMERY & McWILLIAMS **C-6 PG. 3-8**

INDEX TO TRIAL TRANSCRIPT **C-5**

TRIAL TRANSCRIPT EXCERPTS OF JURY TRIAL

3 88-450-16 COL.,DIVISION S.C. 4TH CIR.

DOUGLAS ZEPPEIRO,PLAINTIFF VS

SEAMAN & GRAHAM P.A., DEFENDANTS

*CLOSED COURT PRIOR TO TRIAL CONCEALED 12-5-89

EXCERPTS OF JURY TRIAL STARTS PAGE 2 LINE 2

2 MOTION IN LIMINE DECEMBER 5, 2:15 -2:43 PM

3 THE COURT: ALL RIGHT. THE ONE MATTER I KNOW WE HAVE TO TAKE UP BEFORE WE BEGIN IS THE DEFENDANTS'S MOTION IN LIMINE, AND IT WAS FILED ON THE 1st, FRIDAY.

6 LET ME ASK, FIRST, IF COUNSEL FOR THE PLAINTIFF HAS FILED ANY WRITTEN RESPONSE?

8 MR. MONTGOMERY: NO YOUR HONOR, WE HAVE NOT AT THIS TIME.

10 THE COURT: ALL RIGHT. THEN I WILL BE GLAD-- I HAVE READ THE DEFENDANTS' MOTION, AS WELL AS THE MEMORANDUM, SO I WILL BE GLAD TO HEAR YOU IN OPPOSITION TO THAT.

13 MR. MONTGOMERY: YOUR HONOR, IF I COULD, I WOULD LIKE TO ADDRESS THIS IN OPPOSITION, I GUESS, POINT BY POINT. *(TT-EXC-PG-2-LI-14)

IT'S MY UNDERSTANDING, LET ME JUST CONFIRM WITH THE COURT, THAT WHAT THE DEFENDANT HAS ASKED ESSENTIALLY IS THREE ITEMS BE LIMITED.

FIRST, THAT THE TESTIMONY OF WITNESSES WHO ARE ON OUR LIST, MR. ROBERT LINCOLN AND MR. STANLEY B. LEWIS, BE PREVENTED, ON THE GROUNDS THAT IT MIGHT BE PREJUDICIAL.

I WOULD INFORM THE COURT THAT IT IS OUR CURRENT INTENT NOT TO CALL THESE WITNESSES UNLESS THEY ARE NECESSARY FOR REBUTTAL OF SOME SORT OF ANY TESTIMONY THAT THE DEFENDANT MIGHT GIVE.

THE COURT: WELL, NOW, THEY MAKE THE MOTION NOT ONLY ON THE GROUNDS OF PREJUDICE BUT ALSO IRRELEVANCE, THAT SECURITY ISSUES ARE NO LONGER IN THIS CASE. NOW, DO YOU HAVE ANY DISPUTE WITH THAT?

MR. MONTGOMERY: AS FAR AS THE SECURITIES ISSUES THEMSELVES, NO, I DON'T, YOUR HONOR.

THE COURT: OKAY.

MR. MONTGOMERY: BUT I THINK THEIR TESTIMONY MAY HAVE BEEN SOME FACT WITNESS-- PARTICULARLY

IN THE CASE OF MR. LEWIS, AS FAR AS SOME OTHER ACTIVITIES THAT WENT ON THAT THE DEFENDANT ENGAGED IN, AND PERHAPS MAY HAVE DENIED, AND MAY DENY ON THE WITNESS STAND.

AND THAT WOULD BE THE PURPOSE OF USING THEM AS OPPOSED TO ANYTHING AS FAR AS THE CEASE AND DESIST ORDER OR OTHER SECURITIES MATTERS--

THE COURT: YOU DON'T PLAN TO CALL EITHER ONE OF THEM IN YOUR CASE IN CHIEF THEN?

MR. MONTGOMERY: NO, YOUR HONOR, I DON'T.

THE COURT: THE NEXT CATEGORY IS THE CATEGORY OF OTHER INVESTORS.

MR. MONTGOMERY: YOUR HONOR,I THINK THAT IS PARTICULARLY IMPORTANT BECAUSE IT SEEMS TO ME, AND WHAT I UNDERSTAND THE DEFENSE WANTS TO ATTEMPT TO DO IS TO INDICATE THAT MY CLIENT IS IN A DIFFERENT POSITION OR THAT MY CLIENT MADE A SPECIAL DEAL IN THIS TRANSACTION.

AND I THINK CLEARLY LIKE SITUATED INVESTORS RELEVANT IN THAT THEY CAN DEMONSTRATE THEIR UNDERSTANDING, THE MANNER IN WHICH THIS TRANS-

ACTION WAS REPRESENTED TO THEM AND I DON'T SEE HOW THE DEFENSE CAN ARGUE THAT ANY PREJUDICE RESULTS FROM THAT. AND IT SEEMS TO ME THAT WE HAVE THE TESTIMONY WHICH IS HIGHLY PROBATIVE WHICH OFFERS NO PREJUDICE AGAINST THE DEFENDANT.

AND WE WOULD, I WOULD ASSURE THE COURT, NOT ATTEMPT TO GET OVERLY CUMULATIVE WITH THAT TESTIMONY.

THE COURT: ALL RIGHT. NOW, WHAT IS IT RELEVANT TO?

MR. MONTGOMERY: WELL, IT IS RELEVANT TO THE PRIMARY ISSUE AT HAND, AND THAT IS THE ROLE THAT THE DEFENDANT WAS PLAYING IN THIS TRANSACTION, WHETHER OR NOT HE WAS GOING TO BE HOLDING THESE FUNDS OR THE MONIES IN ESCROW, OR HE WAS HOLDING SOMETHING ELSE IN ESCROW, AS HE CONTENDS. AND I WOULD REPRESENT TO THE COURT BY WAY OF, IF WE CAN MAKE-- IF THE COURT GRANTS A MOTION IN LIMINE IN THIS CASE, I WOULD LIKE THE OPPORTUNITY TO MAKE AN OFFER OF PROOF. ***(TT-EXC-PG-4-LI-22)

BUT I WOULD CERTAINLY REPRESENT TO THE COURT THAT THOSE WITNESSES WOULD TESTIFY WITH OUT EXCEPTION THAT THEIR UNDERSTANDING OF THIS TRANSACTION WAS THAT THE DEFENDANT WAS HOLDING THESE FUNDS IN ESCROW. AND WHEN I SAY "FUNDS," I MEAN THE MONIES WHICH THEY MADE PAYABLE TO HIM AS EITHER ESCROW AGENT OR TRUSTEE.

THE COURT: WHY IS IT NOT INADMISSIBLE UNDER 404 (B)? THAT IS, EVIDENCE OF OTHER ACTS TO SHOW THAT THE -- IN THIS CASE THE DEFENDANT-- ACTED IN CONFORMITY WITH THOSE ACTS--

MR. MONTGOMERY: IT AROSE OUT OF THE SAME TRANSACTION, YOUR HONOR, AND I THINK IT WOULD SHOW THE HABIT OR COURSE OF DEALING IN THIS TRANSACTION.

THE COURT: WELL, TO SHOW HABIT OR ROUTINE PRACTICE YOU HAVE GOT REAL HIGH PROOF TO MEET.

MR MONTGOMERY: I DON'T THINK THAT IS NECESSARY. I MEAN, THIS AROSE OUT OF THE SAME TRANSACTION. THE DOCUMENTS ARE IDENTICAL, THE FUNDS WERE TRANSMITTED AT THE SAME TIME, IT'S

T1 IDENTICAL TRANSACTION.

17 THE COURT: SO ARE YOU ARGUING THAT 404 (B) DOES NOT APPLY OR ARE YOU ARGUING IT--

19 MR. MONTGOMERY: YES, YOUR HONOR, BECAUSE IT IS PART OF THE SAME TRANSACTION.

21 THE COURT: ARE YOU ARGUING IT IS ONE OF THE EXCEPTIONS TO 404 (B)?

23 MR. MONTGOMERY: YES.

24 THE COURT: ALL RIGHT. AND WHICH EXCEPTION?

25 MR. MONTGOMERY: IT AROSE OUT OF THE SAME

1 TRANSACTION, AS I UNDERSTAND IT.

2 THE COURT: WELL, LOOKING AT 404 (B) THE EXCEPTIONS THAT ARE LISTED, WHICH ARE NOT EXCLUSIVE, ARE, "IF THE EVIDENCE PROVES MOTIVE, OPPORTUNITY, INTENT, PREPARATION, PLAN, KNOWLEDGE, IDENTITY, OR ABSENCE OF MISTAKE OR ACCIDENT." NOW, DO YOU FEEL THAT IT FITS INTO ONE OF THOSE?

7 MR. MONTGOMERY: I DON'T THINK IT FALLS UNDER--I'M SORRY IF I MISSPOKE MYSELF--I DON'T THINK IT FALLS UNDER THAT PARTICULAR RULE.

10 THE COURT: ALL RIGHT. *(TT-EXC-PG-6)

MR. MONTGOMERY: BECAUSE I THINK IT IS PART OF THIS TRANSACTION, IT'S NOT SHOWING OTHER CONDUCT OF THE DEFENDANT IN THIS CASE.

THE COURT: ALL RIGHT MS. MCWILLIAMS?

MS. MCWILLIAMS: YOUR HONOR, FIRST, WHAT THESE OTHER INVESTORS WHAT THEIR UNDERSTANDING OF THIS TRANSACTION IS, IS NOT RELEVANT TO THE ISSUES IN THIS CASE WHICH IS WHAT MR. ZEPPEIRO UNDERSTOOD. HE IS THE PLAINTIFF. IN FACT, MR. MONTGOMERY IS REPRESENTING TWO OTHER OF THESE TERM INVESTORS. IF IT IS THE SAME TRANSACTION, WHY AREN'T THEY IN THIS CASE? THE FACT OF THE MATTER IS, THIS IS A BREACH OF CONTRACT AND/OR BREACH OF FIDUCIARY DUTY, WHAT EVER, AS TO MR. ZEPPEIRO'S LOAN TO ECCO GAS CORPORATION. THESE OTHER INDIVIDUALS HAD SEPARATE LOANS TO ECCO GAS, THEY WERE SEPARATE AMOUNTS, THEY DIDN'T ALL ARISE ON THE EXACT SAME DAY, AND WE WOULD SUBMIT THAT WHAT THEY UNDERSTOOD AS THE DEAL BETWEEN THEMSELVES AND ECCO GAS CAN'T BE ADMISSIBLE SIMPLY TO SHOW WHAT MR. ZEPPEIRO-- OR TO REBUT OR REINFORCE

5 WHAT MR. ZEPPEIRO UNDERSTOOD. WE THINK IT IS HIGHLY PREJUDICIAL BECAUSE IN FACT SOME OF THESE PEOPLE HAVE SUED MR.SEAMAN IN SEPARATE ACTIONS, AND THEREFORE IT IS LIKE THEY ARE JUST TRYING TO TAINT THIS TRANSACTION BY SAYING, "WELL, THERE ARE OTHER LAWSUITS, THESE OTHER PEOPLE HAVE BROUGHT LAWSUITS." AND I THINK THAT IT'S CLEARLY INADMISSIBLE UNDER 404 (B). THEY ARE TRYING TO SAY, WHAT YOU DID IN OTHER CASES MEANS YOU MUST HAVE DONE IT HERE. AND--

13 THE COURT: ARE THE DOCUMENTS AT ALL DIFFERENT? ARE THE ESCROW AGREEMENT AND LOAN AGREEMENT DOCUMENTS DIFFERENT WITH RESPECT TO THESE OTHER INVESTORS, VIS-A-VIS MR. ZEPPEIRO?

17 MS. MCWILLIAMS; THE ONLY DIFFERENCE I KNOW OF, YOUR HONOR, WITH RESPECT TO THE DOCUMENTS IS THE AMOUNTS THAT THESE PEOPLE LOANED ECCO GAS. **(TT-EXCERPTS PG 7 LI 19 TO PG 8 LI-1)

1 MS. MCWILLIAMS: THERE-- EVERYBODY MADE THIS LOAN ABOUT THE SAME TIME, IN THE MONTH OF SEPTEMBER OF 1983. ALL THE FUNDS WENT TO NEW

YORK WITHIN JUST A THREE OR FOUR DAY PERIOD OF EACH OTHER, YOUR HONOR, SO, I DON'T MEAN TO SAY ONE DID IT TWO YEARS BEFORE THE OTHER, BECAUSE THEY DIDN'T.

THE COURT; ALL RIGHT.

MS. MCWILLIAMS: BUT I STILL THINK THAT THE LAWSUIT IS BETWEEN MR. ZEPPEIRO AND MR. SEAMAN, OR THESE DEFENDANTS, AND THESE OTHER PEOPLE ARE IN SEPARATE TRANSACTIONS, THEY ARE NOT IN MR. ZEPPEIRO'S TRANSACTION. AND IN ADDITION, MR. ZEPPEIRO IS DIFFERENT FROM THESE OTHER TERM LENDERS BECAUSE HE WAS AN EMPLOYEE OF ECCO GAS AND NONE OF THE OTHERS WERE. AND WE THINK THAT DOES MAKE A DIFFERENCE.

ALL OF THE FACTS WITH RESPECT TO HIS DEAL AND HIS LOANING ECCO GAS ARE NOT GOING TO BE FOUND IN THESE OTHER PEOPLE'S CASES.

IT IS NOT A CLASS ACTION, I JUST THINK IT IS UNFAIR TO LET HIM TROOP IN EVERYBODY HE CAN FIND WHEN THEY ARE NOT SUING HERE.

MR. MONTGOMERY: YOUR HONOR, IF I MAY RESPOND?

ACTION ON THE PART OF THE DEFENDANT, WHICH IS I THINK WHAT THIS TESTIMONY GOES TO.

1 THE COURT: ALL RIGHT. LET ME ASK YOU WHEN YOU INTEND-- TO CALL ANY OF THESE WITNESSES THIS AFTERNOON?

4 MR. MONTGOMERY: NO YOUR HONOR I DON'T.

5 THE COURT: LET ME RESERVE A RULING ON THAT. IF YOU WILL LET ME KNOW -- I GUESS YOU WILL START WITH THEM TOMORROW?

7 MR. MONTGOMERY: I WOULD EXCEPT SO.

8 THE COURT: ALL RIGHT. LET ME RESERVE A RULING ON THAT UNTIL IN THE MORNING.

10 MR. MONTGOMERY: THANK YOU.

11 THE COURT: THE THIRD CATEGORY IS,THE OTHER OIL DRILLING TRANSACTIONS OF ECCO, IS THAT IT?

13 MR. MONTGOMERY: MY UNDERSTANDING, YOUR HONOR, WAS THAT THE THIRD CATEGORY WAS, THERE IS A DISCLOSURE ON THE FIRST PAGE OF THE TERM LOAN AGREEMENT WHICH REFLECTS THAT THIS IS AN UNREGISTERED SECURITY, AND THE DEFENDANT HAS REQUESTED THAT BE REMOVED FROM THE DOCUMENT.

18 AND I THINK OUR RESPONSE TO THAT IS VERY SIMPLE,THAT WOULD THEN SHOW THE JURY LESS THAN THE WHOLE DOCUMENT THAT THESE PEOPLE GOT, AND LESS THAN THE AGREEMENT THAT THESE PEOPLE ENTERED INTO.

22 AND THERE IS CERTAINLY-- I CAN'T SEE ANY PRECEDENT FOR WITHHOLDING THE CONTEXT OF THE DOCUMENT FROM THE JURY. (EXCERPTS PG 11 LI 23)

24 THE DOCUMENT IS ADMISSIBLE IN TOTAL OR IT IS NOT ADMISSIBLE.

25 THE COURT: NOW, I'M LOOKING AT THE MEMO IN SUPPORT OF THE MOTION IN LIMINE AND IT SAYS THAT, "JOSEPH HILYER AND/OR MARTIN MEADOWS WOULD TESTIFY AS TO OTHER DRILLING PROGRAMS OR LAWSUITS ARISING AGAINST ECCO GAS AND--"

4 MR. MONTGOMERY: DON'T ANTICIPATE HAVING THAT TESTIMONY FROM THOSE WITNESSES.

6 THE COURT: ALL RIGHT, NOW, THEN WHAT ABOUT THIS DOCUMENT, MS. MCWILLIAMS?

8 MS. MCWILLIAMS: YOUR HONOR, MR.MONTGOMERY-- I TOLD HIM OVER THE PHONE THAT I WAS GOING TO HAVE A QUESTION ABOUT THE EXHIBITS.

11 YOU ARE RIGHT, MY THIRD ELEMENT OF THE MOTION IN LIMINE WAS TO EXCLUDE ANY EVIDENCE-- AND I ANTICIPATED IT COMING IN FROM JOSEPH HILYER, AN A.G. EDWARD'S EMPLOYEE, OR MARTIN MEADOWS, WHO USED TO BE A.G.EDWARDS EMPLOYEE.
15 AND IF MR. MONTGOMERY WILL STIPULATE HE'S NOT GOING TO ASK ABOUT ANY OTHER ECCO GAS DEAL AND/OR PROBLEM WITH A.G.EDWARD'S' THEN I THINK THAT WAS THE SUBJECT OF THIS THIRD MOTION IN LIMINE.
19 BECAUSE-- BUT THIS, WHAT HE HAS BROUGHT UP, IS RELATED. ON THE TERM LOAN AGREEMENT ACROSS THE TOP THERE WAS REFERENCE TO SECURITIES. THE SECURITIES ACTION HAS BEEN DISMISSED FROM THIS CASE, THERE IS NOT GOING TO BE ANY INSTRUCTIONS OF LAW ABOUT SECURITIES MR. MONTGOMERY SAYS HE'S NOT GOING TO CALL MR.LEWIS OR MR. LINCOLN TO TALK ABOUT THE FACT THAT THIS WAS AN UNREGISTERED SECURITY, AND WE JUST DON'T THINK THAT SHOULD BE THERE. BECAUSE
2 THE COURT: ALL RIGHT . THIS IS THE TOP PART OF THIS-- *(TT-EXCERPTS-PG 13 LI-2)

MS. MCWILLIAMS: YES, YOUR HONOR, AND WHAT WE WOULD PROPOSE TO DO, IF I MAY APPROACH THE BENCH--

THE COURT: ALL RIGHT.

MS. MCWILLIAMS: I WAS JUST GOING TO-- BE THE EXACT SAME, BUT JUST TAKE THIS OUT.

(BENCH CONFERENCE).

MS. MCWILLIAMS: WE JUST SUBMIT THAT THIS IS CONFUSING, THAT SINCE THERE IS GOING TO BE NO TESTIMONY ABOUT ANYTHING ABOUT SECURITIES, ABOUT THIS BEING A SECURITY, THAT THAT DOESN'T AND GIVEN THE CLIMATE OF TODAY WITH IVAN BOSKI AND EVERYTHING ELSE, IF THE JURY SEES SOMETHING ABOUT SECURITIES ON THERE, THERE MIGHT BE CONFUSION AND IT MIGHT BE PREJUDICIAL.

THIS IS NOT A SECURITIES CASE, YOU HAVE THROWN OUT THE CLAIM FOR SECURITIES FRAUD, AND THEREFORE IT SHOULDN'T BE IN THERE.

THE COURT: ALL RIGHT. LET ME ASK YOU, IS THE HANDWRITING ON HERE--

MS. MCWILLIAMS: I DON'T KNOW WHAT--

22 DECEMBER 8, 1989-9:58 A.M.)PLAINTIFF-BENCH

23 THE COURT: ALL RIGHT, FINE. MR. ZEPPEIRO CAN YOU COME UP TO THE BENCH A MINUTE? I WOULD LIKE THE LAWYERS TO REMAIN UP HERE.

1 MR. ZEPPEIRO: SHALL I COME FORWARD?

2 THE COURT: (NODS HEAD IN THE AFFIRMATIVE).

3 ALL RIGHT, I UNDERSTAND YOU WISH TO MAKE SOME STATEMENT--

5 MR. ZEPPEIRO: YES I DO.

6 THE COURT: --TO THE COURT? ALL RIGHT, WHAT DOES IT CONCERN?

8 MR.ZEPPEIRO: I WOULD LIKE TO DISCUSS AND GO OVER THE COLLATERAL AS IT WAS REPRESENTED AND BRING OUT TO THE JURY THAT THE FUNDS OF ECCO GAS AND ECCO GAS DRILLING INVESTORS WAS REPRESENTED TO BE $262,500. AND SEAMAN KNOWINGLY AND WILLFULLY, WITH MALICE, KNEW, WHEN HE TOOK MY CHECK FOR $45,000, THAT THERE WAS A $32,500 CHECK MISAPPOPRIATED, COMMINGLED, AND LAUNDERED IN THE TRUST OF AN ACCOUNT OF SEAMAN AND GRAHAM, WASTING THOSE FUNDS, AND KNOWINGLY AND WILLINGLY THAT I WAS DUE $5,000 CREDIT.

I HAD NOT RECEIVED MY AUGUST SALARY IN AUGUST AND ON SEPTEMBER 15TH WHEN I CALLED HIM, WHICH WAS $12,455; THAT THOSE FUNDS WOULD BE CREDITED INTO THE TERM LOAN, WHICH ADDS UP TO $262,500. THE $32,500 CHECK -- AM I GOING TO FAST? I'M SORRY.

THE COURT: NO.

MR. ZEPPEIRO: THE $32,500 CHECK-- WILL SHOW THAT IT WAS LAUNDERED TO MAKE UP $262,500 THERE WERE ONLY EIGHT CONTRACTS IN THE TERM INVESTORS, WHICH ADD UP TO-- SEVEN OF THEM-- $232,000.

MR. SCOTT'S $50,000; MR. SMITH, BARNABAS SMITH, DAVE ALBANESE'S GRANDFATHER, $50,000; MR. FULLER'S $40,000; THELMA ANDREWS, $10,000. THAT ADDS UP TO $150,000. $12,500 OF MR. STEWART'S FROM ALBANY, OREGON; $12,500 OF MR. WALKER'S FROM OREGON-- ALBANY, OREGON; AND MR. STEWART'S $12,000, FOR A TOTAL OF $232,000. THE $232,000, THE MISREPRESENTATION, AND THE-- I BELIEVE TO BE RICO LAUNDERING AND MISAPPROPRIATION, ADDING THE 200-- THE, EXCUSE ME,

ADDING-- ADDING THE $232,000 AND THE $32,500 SHOWS THAT THERE IS $264,500 IN THE TRUST ACCOUNT OF SEAMAN AND GRAHAM, KNOWINGLY AND WILLINGLY, THAT THE CONTRACT SHOULD ONLY HAVE BEEN $232,000 PLUS MR. ZEPPEIRO'S $5,000, FOR 237. WHEN YOU ADD THE $232,000 AND THE $32,500, THEY ADD UP TO $264,500. THEY KNEW THAT THE TERM INVESTORS DID NOT HAVE $264,500, THEY ONLY CAN SHOW EIGHT CONTRACTS THAT TOTAL $237,000.

THE COURT: ALL RIGHT.

MR. ZEPPEIRO: TO COVER UP--

THE COURT: ALL RIGHT. MR. ZEPPEIRO, LET ME STOP YOU. NONE OF THIS IS IN EVIDENCE.

MR. ZEPPEIRO: PARDON ME?

THE COURT: NONE OF THIS WAS IN EVIDENCE.

MR. ZEPPEIRO:IT WAS, YOUR HONOR. IN THE--

THE COURT: WELL, NONE OF IT--

MR.ZEPPEIRO:I SUBMITTED IT TO MY ATTORNEYS

THE COURT: WELL, IF IT'S NOT IN EVIDENCE, MR. ZEPPEIRO, THEN YOUR ATTORNEYS CAN ONLY ARGUE TO THE JURY-- FIRST OF ALL, YOU CAN'T

SAY ANYTHING TO THE JURY. I DON'T KNOW IF YOU-

7 MR. ZEPPEIRO: I UNDERSTAND THAT.

8 THE COURT: YOUR LAWYERS CAN ONLY ARGUE WHAT IS IN THE EVIDENCE, AND IF IT HAS NOT BEEN PUT IN THE EVIDENCE, THEN IT--

11 MR. ZEPPEIRO: IT IS IN THE EVIDENCE AND I CAN SHOW WHERE--

13 THE COURT: WELL, YOU TELL YOUR LAWYERS.

14 MR. ZEPPEIRO? MAY I--

15 THE COURT: NO--

16 MR. ZEPPEIRO: -- TELL MY LAWYERS?

17 THE COURT: YOU CAN TELL YOUR LAWYERS, CERTAINLY. BUT THERE IS NO REASON FOR THIS TO GO ON THE RECORD. YOU TELL YOUR LAWYERS WHAT YOU WANT THEM TO ARGUE, AND THEY CAN ARGUE FROM THE EVIDENCE.

21 MR. ZEPPEIRO: YOUR HONOR, WHY WOULD YOU NOT WANT IT TO GO ON THE RECORD WHEN I CAN SHOW 52 ACTS OF RICO AND LAUNDERING OF FUNDS?

24 THE COURT: I WILL TELL YOU WHY, THE EVIDENCE PORTION OF THIS TRIAL IS OVER WITH.

1 MR. ZEPPEIRO: IS THAT RIGHT?

THE COURT: YES, WE FINISHED THAT YESTERDAY. YOU CLOSED YOUR EVIDENCE YESTERDAY, THE DEFENDAND CLOSED HIS EVIDENCE YESTERDAY, AND WE ARE NOW GOING TO SUBMIT IT TO THE JURY ON WHAT EVIDENCE CAME IN AS OF YESTERDAY.

MR. ZEPPEIRO: YOUR HONOR, THE $32,500 CHECK WAS USED AS EVIDENCE YESTERDAY AND I HAD TO EXPLAIN IT ON THE BENCH.

THE COURT: WELL, YOU TALK TO YOUR LAWYERS ABOUT THAT. NOW, AS FAR AS INJECTING RICO OR ANY OTHER CLAIM INTO THIS CAUSE OF ACTION, IT'S TOO LATE AND THAT'S--

MR. ZEPPEIRO: IT'S TOO LATE FOR RICO?

THE COURT: WELL, IT'S TOO LATE TO ADD ANYTHING TO THIS CAUSE OF ACTION. YOU TALK TO YOUR LAWYERS ABOUT--

MR. ZEPPEIRO: OKAY.

THE COURT: --ANYTHING YOU WANT TO.

MR. ZEPPERIO: ARE YOU SAYING I CANNOT USE THE EVIDENCE OF $32,500 THAT I WAS CROSS EXAMINED YESTERDAY ON?

THE COURT: I'M NOT SAYING YOU CAN'T--

YOUR LAWYERS CAN USE THAT WITHIN THE CLAIMS THAT YOU BROUGHT UNDER YOUR COMPLAINT, BUT YOU HAVE NOT BROUGHT A RICO CLAIM, SO THEY ARE NOT GOING TO ARGUE RICO. THEY CAN'T--

23 MR. ZEPPEIRO: OKAY, YOUR HONOR, IF THERE IS LAUNDERING OF FUNDS OF $32,500 THAT HAS BEEN MISAPPROPRIATED TO SHOW A $262,500 TO THE TERM INVESTORS, THEN I'M ENTITLED TO $75,000 CREDIT ON THAT TERM LOAN INVESTMENT, $45,000 OF MR. SEAMAN'S THAT I FORWARDED, $5,000 THAT HE EVANDED ON THE $12,000--

4 THE COURT: MR. ZEPPEIRO, YOU ARE BEGINNING THE SENTENCES WITH, "IF THEY HAVE DONE THIS." THAT'S

6 MR. ZEPPEIRO: THEY DID.

7 THE COURT: THAT IS NOT IN THIS CASE.

8 MR.ZEPPEIRO: OKAY,I KNOW WHAT I HAVE TO DO.

9 THE COURT: IT MAY BE ANOTHER CASE.

10 MR. ZEPPEIRO: IT WILL BE ANOTHER CASE. I WILL FILE IN WASHINGTON, D.C., FOR RICO.

12 THE COURT: ALL RIGHT,NOW LET ME CONSIDER--

EXCERPTS OF JURY TT ZEPPEIRO-CROSS-PG-29-LI-3

3 A. "I GOT IT THROUGH THE MAIL--" EXCUSE ME -- " I GOT IT THROUGH THE MAIL. I CALLED THEM UP AND I SAID, "I GOT IT THROUGH THE MAIL. I CALLED THEM UP AND I SAID, 'I AM DOING AN INVESTIGATION AND I BELIEVE THERE IS A SCAM RUNNING IN THIS STATE THAT IS BEING REPRESENT-ED BY ATTORNEYS--'"

7 Q. YOU CAN STOP RIGHT THERE.

8 A. THE SENTENCE IS NOT FINISHED.

9 MS. MCWILLIAMS: WELL, YOUR HONOR, WOULD YOU LIKE TO SEE WHAT IT IS HE IS REFERRING TO?

11 A. I DIDN'T FINISH IT. SHE TOLD ME TO READ IT. "SCAM RUNNING IN THE STATE--"

13 THE COURT: MR. ZEPPEIRO.

14 MR. MONTGOMERY: STOP, SHE DOESN'T WANT YOU TO ANSWER ANY MORE.

16 THE WITNESS: SURELY.SURELY. TT TO PG32-L22

22 MR. POTTS: YOUR HONOR, I WOULD LIKE TO ADVISE THE COURT OF ONE MATTER. THE COURT HAS, OF COURSE, A GREAT DEAL OF WEIGHT AND IT IS INSTRUCTING MR. ZEPPEIRO AS TO WHAT HE MUST

DO ON THE WITNESS STAND. IF MR. ZEPPEIRO DOES NOT DO WHAT THE COURT INSTRUCTS HIM THIS TIME, I WOULD NOTE TO THE COURT THAT IT PROBABLY IS NOT INTENTIONAL ON MR. ZEPPEIRO'S PART.

4 THE COURT: I REALIZE THAT.

5 MR. POTTS: HE IS UNABLE, GENERALLY SPEAK-ING, TO CARRY FORTH WITH AN INSTRUCTION THAT HE IS GIVEN. THAT HAS BEEN THE CASE. SO, IT IS NOT INTENTIONAL IF HE DOES NOT DO IT. I WOULD JUST LIKE TO ADVISE YOU OF THAT. (PG-36

1 MS. MCWILLIAMS: CAN I READ 15 THEN HIS ANSWER?

2 THE COURT: YES, READ LINES 15 AND 16 AND--

3 MS. MCWILLIAMS: AND HE READS 22.

4 THE COURT: SHOW HIM THAT.

5 MS. MCWILLIAMS: YOU WANT TO TELL HIM?

6 (IN OPEN COURT).

7 THE COURT: MR. ZEPPEIRO, LOOK AT THAT DEPOSITION, MS. MCWILLIAMS IS GOING TO ASK YOU THE QUESTION THAT APPEARS ON LINES 15 AND 16, LOOK AT THAT.

10 THE WITNESS: YES.

THE COURT: DO YOU SEE THAT QUESTION?

THE WITNESS: YES. I DO YOUR HONOR.

THE COURT: ALL RIGHT. SHE'S GOING TO READ THAT QUESTION TO YOU, YOU GO DOWN TO LINE 22.

THE WITNESS: OKAY. I'M GOING DOWN TO LINE 22, SHE'S GOING TO READ THE QUESTION ON LINE 15.

THE COURT: RIGHT. AND THE LINE 22 ANSWER IS "NO."

THE WITNESS: THAT'S CORRECT.

THE COURT: AND THAT'S WHAT I WANT YOU TO READ WHEN SHE ASKS YOU THAT.

THE WITNESS: YES, YOUR HONOR.

MR. POTTS: MAY I MARK THE BOOK OR CIRCLE THE "NO"?

THE COURT: ALL RIGHT. WOULD YOU BRING THE JURY IN, PLEASE?

MR. POTTS: WHEN SHE'S FINISHED WITH THE QUESTION, SIR, JUST SAY THAT.

THE WITNESS: YES, SIR.

(JURY PRESENT).

THE COURT: ALL RIGHT.

BY MS. MCWILLIAMS: Q. MR. ZEPPEIRO, I'M GOING TO READ THE QUESTION ON LINE 15."

WHAT WAS YOUR LEGAL AUTHORITY FOR GETTING THE PHOTOCOPY OF CHECK FROM A PERSON'S PERSONAL CHECKING ACCOUNT?

A. " NO."

LET ME SHOW YOU, MR. ZEPPEIRO--

DID I DO SOMETHING WRONG?

THE COURT: JUST ANSWER HER QUESTION, MR. ZEPPEIRO.

THE WITNESS: I ANSWERED "NO."

MS. MCWILLIAMS: THANK YOU. (ZEP-CROSS)

(BENCH CONFERENCE CONCERING NOTE FROM JURY

DECEMBER 8, 1989 2:22 P.M.)

THE COURT: THE QUESTION FROM THE JURY IS, "WHEN SERVING AS AN EXCROW AGENT, IS IT THE ESCROW AGENT'S RESPONSIBILITY TO DO A TITLE SEARCH TO ASSURE THAT THE COLLATERAL IS FREE AND CLEAR BEFORE ACCEPTING RESPONSIBILITY? "

AND THEN IN PARENTHESES THEY HAVE WRITTEN, "FREE TO BE RECORDED."

MR POTTS: ABSOLUTELY POSITIVELY.

13 Q. AND DID YOUR ACCEPT THIS POSTIION WITH ECCO GAS THAT WAS OFFERED TO YOU?

15 A. I SAY I DID.

16 Q. AND WHAT WAS YOUR JOB TITLE IN THAT POSITION?

17 A I WAS FIELD REPRESENTATIVE FOR ECCO GAS. TT PAGE 45 LI 19 & GO PG 47 LI 16, MARTIN

19 Q. OKAY HOW DID YOU BECOME INVOLVED IN THE 105 WELL THAT WERE GOING TO BE BOUGHT BY ECCO?

21 A. NUMBER ONE, WE WERE HAVING TROUBLE WITH OUR DRILLING OPERATOR, MR. LANJEN (PHONETIC). AND I TALKED WITHMR. JACOBS, HE TOLD ME TO LOOK AROUND--

16 A. I HAD A CALL FROM MR. SEAMAN ASKING ME TO PICK THE FOUR TOP WELLS, AND THE NEXT TOP 30 FOR ECCO GAS DRILLING CORPORATION, AND SEAMAN AND GRAHAM. (GO TO PG 48 LI 18)

18 Q. WHAT NEGOTIATIONS DID YOU SUBSEQUENTLY ENTER INTO?

19 WE WERE TO PICK THE TOP FOUR WELLS FOR ECCO GAS DRILLING CORPORATION.

21 Q. NO, SIR, WHEN I SAY "NEGOTIATIONS," I

MEAN AS TO HOW YOU WERE GOING TO BUY THEM? WE WERE GOING TO RAISE $500,000, AND WE WOULD TAKE THE COLLATERAL ON FOUR WELLS, WHICH WOULD BE GIVEN TO THE INVESTORS, AND TO GET 30 PERCENT RETURN ON THE MONEY, AND 13 PERCENT INTEREST GUARANTEED RETURN IN SIX MONTHS.>

Q. OKAY, THAT'S AFTER YOU BOUGHT IT WHAT YOU WERE GOING TO DO WITH IT?

A. THAT IS CORRECT.

Q. HOW DID YOU GET TO THE POINT OF TALKING ABOUT BUYING THEM?

A. OKAY. WE HAD A CADRE THAT WENT TO CALGARY, ALBERTA. MYSELF, WOODY DENNING, ALBANESE, MARTIN MEADOWS AND MYSELF.

Q. AND WHAT DID YOU DO IN CALGARY?

A. WE CAME UP WITH THE PROJECT OF WHAT WE HAD TO COME UP WITH AND THE MONIES THAT WE HAD TO COME BACK, AND WE COME BACK HOME TO PRESENT A PROGRAM.

MS. MCWILLIAMS: YOUR HONOR, WHAT THEY ARE SELLING FOR WOULD BE HEARSAY.*GO TT EX- PG 50.

THE COURT: GO AHEAD.

A. IN THE INVESTMENT-- ON THE INVESTMENT PROGRAM, ON THE INVESTORS, THEY WERE SELLING THE WELLS FOR $160,000 EACH--

Q. OKAY.

A. --IN ONE TO SIX PROJECT.

MS. MCWILLIAMS: YOUR HONOR,I'M GOING TO OBJECT. WE HAVE ALREADY HAD A RULING ON THE PRIOR ECCO GAS PROJECTS, AND THAT'S WHAT HE'S JUST TESTIFIED ABOUT, I WOULD ASK THAT REMARK BE STRICKEN.

THE COURT:ALL RIGHT COME UP TO THE BENCH.

(BENCH CONFERENCE).

THE COURT: ALL RIGHT. YOU HAVE GOT HIM DOWN AS--

MR. MONTGOMERY: TESTIFYING ABOUT ANY DEALINGS--

THE COURT: --REGARDING ECCO GAS--

MS. MCWILLIAMS: NO, WE--

THE COURT: MS. MCWILLIAMS, DON'T INTERRUPT. YOU HAVE GOT HIM LISTED AS TALKING ABOUT AGREEMENTS CONCERNING ECCO GAS COMPANY,

NOW IS THIS AN ECCO TRANSACTION?

MR. MONTGOMERY: YES, MA'AM.

THE COURT: IS THAT WHAT YOU JUST ASKED HIM ABOUT?

MR. MONTGOMERY: THAT'S WHAT I ASKED HIM, THAT'S NOT WHAT HIS ANSWER WAS. OKAY?

THE COURT: ALL RIGHT. THEN I WILL STRIKE THAT ANSWER. NOW, WHAT--

MR. MONTGOMERY: I SIMPLY WANT HIM TO TELL ME WHAT THEY PLANNED TO SELL THESE WELLS FOR.

THE COURT: THESE WELLS. WHAT DID HE GIVE YOU AN ANSWER TO? SOME OTHER--

MR. MONTGOMERY: WHAT HE WAS REFERRING TO WAS OTHER WELLS THEY HAD SOLD, NOT THESE PARTICULAR WELLS.

THE COURT: ALL RIGHT. I WANT YOU TO CORRECT HIM.

MR. MONTGOMERY: OKAY.

MS. MCWILLIAMS: IF HE COULD ASK THE QUES-TIONS AND RELATE THEM TO THIS PROJECT, MAYBE THAT WOULDN'T-- I MEAN, TO THIS TRANSACTION. IF YOU LEAVE IT OPEN-ENDED * (TT EX-51 LI-10)

THE COURT: ALL RIGHT.

(IN OPEN COURT).

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I WILL ASK YOU TO DISRREGARD THAT LAST ANSWER AND IT WILL BE STRICKEN FROM THE RECORD.

BY MR. MONTGOMERY:

Q. MR. MARTIN, ARE YOU AWARE OF WHAT THE PLANS WERE TO SELL THESE ADDITIONAL WELLS FOR?

CORRECT, I WAS .

Q. AND WHAT KIND OF VALUE WERE YOU PLANNING, AS A PERSON INVOLVED IN THIS TRANSACTION, TO RESELL THESE WELLS THAT YOU WERE PURCHASING THEM FOR?

A. WE WERE GOING TO TRY TO SELL THEM FOR $85,000 EACH.

Q. OKAY. AND IT WAS YOUR CONCLUSION THAT THAT WAS A REASONABLE PRICE?

MS. MCWILLIAMS: YOUR HONOR, OBJECTION, LEADING.

MR. MONTGOMERY: YOUR HONOR, LET ME REPHRASE THAT.

THE COURT: ALL RIGHT.

BY MR. MONTGOMERY:

Q. WERE YOU ABLE TO CONCLUDE AS TO WHETHER OR NOT THAT PRICE WAS APPROPRIATE?

A. YES, SIR, WE WERE.

Q. AND WHAT DID YOU DETERMINE?

A. WE DETERMINED WE WOULD PURCHASE THE WELL AT $20,000 APIECE, AND SELL THEM FOR 85.

Q. OKAY. DID YOU HAVE ANY--WHEN YOU MADE THIS DETERMINATION, DID YOU KNOW WHAT THE WELLS WERE PRODUCING?

A. YES, WE DID, A FEW OF THEM. THE HOCKENBERRY WELL NUMBER 2 WAS PRODUCING APPROXIMATELY $4,000 A WEEK.

Q. OKAY. WERE THERE OTHER WELLS THAT WERE COMPARABLE TO THAT?

A. YES, THERE WERE.

Q. OKAY. DO YOU KNOW AS PART OF THESE NEGOTIATIONS IF ECCO MADE ANY PAYMENT TO THE PEOPLE YOU WERE BUYING THESE 105 WELLS FROM?

A. THEY DID NOT.

Q. DO YOU KNOW WHEN ANY MONEY EVER

CHANGED HANDS?

A. THEY WERE NOT.

Q. WHAT WAS YOUR ROLE TO BE IN THIS CORPORATION THAT WAS BUYING THESE WELLS?

A. WELL, WE WERE TO FORM A NEW COMPANY, A MERGER, BETWEEN ECCO GAS AND INTERSTATE DRILLING, AND THE NEW COMPANY WAS TO BE CALLED ECCO GAS DRILLING CORPORATRION?

A. I WAS TO BE THE PRESIDENT. A MEETING WAS HELD AT RAMADA INN IN MARIETTA, AND WAS VOTED ON BY ALL THE OFFICERS AND PEOPLE OF ECCO GAS.

Q. DO YOU KNOW IF MR. ZEPPEIRO WAS TO HAVE ANY ROLE IN THAT CORPORATION?

A. THAT IS CORRECT, HE WAS SUPPOSED TO BE VICE-PRESIDENT OF PUBLIC RELATIONS.

Q. HOW ABOUT THE STOCK OF ECCO GAS DRILLING CORPORATION?

A. WE WERE TOLD THAT--

MS. MCWILLIAMS: YOUR HONOR, OBJECTION.

THE COURT: DON'T SAY THAT

BY MR. MONTGOMERY: (TT-PG 53 MARTIN)

18 Q, OF YOUR OWN KNOWLEDGE, WHAT DO YOU KNOW ABOUT HOW THE STOCK WAS SUPPOSED TO BE DISTRIBUTED, SINCE YOU WERE SUPPOSED TO BE PRESIDENT?

21 A. WE WERE TO RECEIVE STOCK OF 10 PERCENT IN THE NEW COMPANY.

23 Q. WHEN YOU SAY "WE, " WHO ARE YOU REFERRIG TO?

24 A. MR. ZEPPEIRO AND MYSELF AND WOODY DENNING AND MARTIN MEADOWS WAS TO GE 10, AND IT WOULD BE 25 PERCENT INTERSTATE.

1. Q. HOW MUCH DID YOU EXPECT YOUR 10 PERCENT TO BE WORTH?

2 A. WELL, OVER A PERIOD OF YEARS WOULD BE TWO AND -A- HALF MILLION.

4 Q. OKAY. DID YOU EVER TALK WITH MR. SEAMAN?

5 A. ONE TIME.

6 Q. AND WHAT DID YOU DISCUSS WTIH MR. SEAMAN?

7 A. MR. SEAMAN AT THAT TIME CALLED ME AND ASKED ME THAT HE NEEDED OUR RESUMES AND HE NEEDED TO PICK THE TOP FOUR WELLS IF WE HAD TO

GO-- EVEN GO INTO THE FIVE OTHER WELLS, AND GET THE TOP 30.

Q. AND I WANTED TO GO BACK OVER WITH YOU, THE INVESTORS THAT WERE HELPING RAISE THE MONEY FOR THIS LOAN, WHAT WERE THEY SUPPOSED TO GET?

A. THEY WERE SUPPOSED TO GET FOUR OF THE BEST WELLS OUT OF THE 105.

Q. ANYTHIN ELSE?

A. AND THEY WERE SUPPOSED TO GE 30 PERCENT RETURN ON THEIR INVESTMENT, AND 13 PERCENT INTEREST ON THEIR MONEY, RETURNED IN 60 DAYS.

Q. DID YOU EVER SPEAK WITH MR. ZEPPEIRO REGARDING CORRESPONDENCE THAT HE WROTE IN THE EARLY PART OF SEPTEMBER ABOUT THINGS THAT HE WAS CONCERNED ABOUT IN THIS TRANACTION?

A. CORRECT.

MR. MONTGOMERY: THANK YOU, I HAVE NO FURTHER QUESTIONS OF THIS WITNESS.

START PAGE 55 LI-9 MARTIN CROSS EXAMINATION

Q. --YOU WEREN'T INVOLVED IN THE STRUC-

TURING OF THIS TERM LOAN AGREEMENT WE HAVE TALKED ABOUT TODAY, WERE YOU ?

A. NO, I WAS NOT.

Q. ALL RIGHT. AND YOU DON'T HAVE ANY PERSONAL KNOWLEDGE OF MR. ZEPPEIRO'S DEALINGS WITH MR. JACOBS AND ECCO GAS CORPORATION RELATIVE TO HIS LOAN TO ECCO GAS, DO YOU?

A. ONLY I DID SEE THE TRANSACTION.

Q. ALL RIGHT.NOW-- BUT PERSONAL KNOWLEDGE?

A. NO, NOT PERSONAL KNOWLEDGE.

Q. ALL RIGHT. NOW, YOU SAID THAT MR. SEAMAN CALLED YOU AND ASKED YOU TO PICK THE TOP FOUR WELLS?

A. THAT'S CORRECT. (TT GOES TO PG 56 LI 8

Q. NOW, DID MR. SEAMAN PROMISE YOU THAT HE WAS GOINGTO GET YOU THIS STOCK THAT YOU SAY YOU ARE ENTITLED TO IN ECCO GAS DRILLING CORPORATION IN THIS TELEPHONE CONVERSATION?

A. THAT IS CORRECT.

Q. FROM PG 58 MARTIN CROSS

Q. ALL RIGHT. NOW,ISN'T IT TRUE, MR. MARTIN, THAT YOU GAVE AN AFFIDAVIT TO MR. ZEPPEIRO?

VOLUME I- JURY TRIAL C/A NO.3 88-450-16

U.S. DISTRICT COURT,DIST.OF S.C.,COLUMBIA DIV.

DOUGLAS ZEPPEIRO,PLAINTIFF, VS SEAMAN & GRAHAM

12-5-89 AT 2:43 -5:35 P.M. START PG 1-2 LI 16

<16> THE COURT: WE HAVE GOT A JUROR WHOSE NAME IS PEGGY CLEMONS AND SHE IS FROM ANDREW, AND APPARENTLY SHE GOT LOST IN THE CITY OF COLUMBIA THIS AFTERNOON FOR TWO HOURS. SHE IS-- SHE'S TOLD THE CLERK THAT SHE IS ON THE VERGE OF A NERVOUS BREAKDOWN BECAUSE SHE'S NEVER BEEN IN A BIG CITY AND I THINK THE FACT SHE GOT LOST IN TRAFFIC SCARED HER.

22 WHAT I WOULD LIKE TO DO IS TO ASK THE PARTIES IF THEY WANT ME TO CALL HER OUT HERE AND ASK HER IF SHE-- IF SHE FEELS SHE CAN LISTEN TO THE EVIDENCE AND-- PERHAPS ONCE THE TRIAL STARTS AND NOW THAT SHE IS HERE, AND THE CLERK IS GOING TO--

HAS OFFERED, IN FACT, TO SEE THAT SHE GETS TO HER MOTEL AT NIGHT. SHE'S GOING TO STAY HERE DURING THE WEEK.

<3> IF YOU WANT ME TO ASK HER ABOUT THAT-- I

DON'T WANT TO START THE TRIAL WITH SOMEONE WHO IS JUST SO UPSET THAT SHE'S NOT EVEN PAYING ANY ATTENTION TO THE EVIDENCE. BUT I ALSO DON'T WANT TO SCARE HER EVEN FURTHER BY BRINGING HER OUT HERE. (GOES TO PG.I-5 LI 9)

<9> THE COURT: YOU WANTED TO ENTER A STIPULATION FIRST?

10 MR MONTGOMERY: YES, YOUR HONOR. THE PLAINTIFF IS GOING TO STIPULATE AND WITHDRAW FROM HIS COMPLAINT ANY CLAIM THAT HE MAY HAVE FOR DAMAGES AS A RESULT OF EMOTIONAL DISTRESS, AND WE WOULD THEREBY NOTIFY THE COURT AND WE HAVE PREVIOUSLY NOTIFIED THE DEFENDANT OF THAT FACT

15 THE COURT: ALL RIGHT, SO THAT WOULD ELIMINATE, AT LEAST,WAYNE LOCKHART AS A WITNESS?

17 MR. MONTGOMERY: YES, YOUR HONOR, THAT IS CORRECT.

18 THE COURT: OKAY.

19 MS MCWILLIAMS: THE DEFENDANTS, YOUR HONOR, ARE GOING TO WITHDRAW THEIR COUNTERCLAIM.

(GOES TO PG 1-20-LI 9)

<9> AND THE BASIS OF THIS LAWSUIT IS THAT MR.

ZEPPEIRO WAS INVESTING THE SUM OF $50,000, AND HE WAS TO INVEST THIS MONEY INTO AN AGREEMENT WITH A COMPANY THAT WAS PROVIDING AND SELLING OIL WELLS. AND THE PURPOSE OF THIS INVESTMENT WAS TO ALLOW THIS COMPANY TO BUY THESE OIL WELLS, WHICH THEY WERE GOING TO THEN RESELL AT A PROFIT. VOL I PG 1-20

MR. ZEPPEIRO WAS SUPPOSED TO BE GIVEN COLLATERAL FOR HIS INVETMENT. AND YOU WILL HEAR ABOUT SOME OIL WELLS THAT HE WAS SUPPOSED TO GET INTEREST IN AS PART OF HIS COLLATERAL.

NOW, WHERE THE DEFENDANT COMES INTO PLAY IN THIS CASE IS THAT HE WAS TO HOLD THE MONEY. AND THE MONEY THAT MR. ZEPPEIRO SENT, YOU WILL FIND, WAS SENT IN A CHECK TO THE DEFENDANT. YOU WILL ALSO FIND IN THESE FACTS THAT THE DEFENDANT SENT THE MONEY OUT OF HIS BANK ACCOUNT THE VERY SAME DAY THAT MR. ZEPPEIRO SENT IT TO HIM. MR. ZEPPEIRO CONTENDS THAT THE DEFENDANT WAS RESPONSIBLE FOR HIS MONEY UNDER AN ESCROW AGREEMENT. AND ONE OF THE DOCUMENTS THAT YOU WILL RECEIVE INTO EVIDENCE

WILL BE THAT ESCROW AGREEMENT, AND YOU WILL HAVE AN OPPORTUNITY TO READ IT AND LOOK AT ITS TERMS FOR YOURSELF. (PG I-21)

4 BUT THE MOST IMPORTANT THING THAT WE THINK YOU WILL FIND ABOUT THAT ESCROW AGREEMENT, AND ONE OF THE INTERESTING THINGS, IS I EXPECT THE DEFENDANT WILL ATTEMPT TO TELL YOU THAT THAT ESCROW AGREEMENT SAYS "MONEY," BUT IT DOESN'T MEAN MONEY. AND SO HE'S GOING TO ATTEMPT TO CONVEY TO YOU THE IDEA THAT "MONEY" JUST ISN'T

9 WHAT IT SAYS IT IS. (GOES >PG 1-29 LI 10

(MS. MCWILLIAMS DEFENDANTS ATTORNEY OPENING)

<10> THE BORROWER, AS I SAID, WAS ECCO GAS CORPORATION.

11 THAT WAS A CALIFORNIA CORPORATION, WHERE MR. ZEPPEIRO IS FROM, WHICH IS NOW DEFUNCT. IT DID NOT REPAY ITS LOAN TO MR. ZEPPEIRO. MR. ZEPPEIRO WAS THE LENDER.

14 HIS RECOURSE, WHEN HIS LOAN WASN'T REPAID, WAS TO GO AFTER THE PERSON THAT HE HAD LOANED THE MONEY TO, IN THIS CASE THE ENTITY,ECCO GAS CORPORATION. PG 1-29 LI 17

17> MR. SEAMAN AND THE SEAMAN DEFENDANTS DID NOT-- WERE UNDER NO OBLIGATION TO REPAY THIS LOAN. THEY DID NOT HAVE

19> ANYTHING TO DO WITH THE AGREEMENT BETWEEN MR. ZEPPEIRO AND ECCO GAS EXCEPT TO THE EXTENT-- AND YOU WILL SEE THE ESCROW AGREEMENT AND THE TERM LOAN AGREEMENT. (GOES>1-30 LI-24

24 AND THAT IS EXACTLY WHAT MR. SEAMAN DID. IN EXCHANGE FOR THE FUNDS THAT ECCO GAS GOT, IT GAVE BACK A TERM LOAN AGREEMENT. YOU WILL HAVE THAT, WHEN THERE IS TESTIMONY ABOUT IT, YOU WILL BE ABLE TO SEE IT. (PG 1-31)

<3> AND THAT WAS ESSENTIALLY A NOTE. AGAIN, GOING BACK TO THE ANALOGY OF BORROWING MONEY TO BUY A CAR, IF YOU GO INTO A BANK, BORROW MONEY FOR A CAR, YOU HAVE TO SIGN A NOTE, IN OTHER WORDS, SAYING YOU ARE GOING TO REPAY IT. THAT'S EXACTLY WHAT ECCO GAS DID, THEY EXECUTED A TERM LOAN AGREEMENT, THAT WAS THE NOTE.

9 NOW, JUST AS WHEN YOU BORROW MONEY TO BUY A CAR, WHO HOLDS THE NOTE? THE LENDER DOES, UNTIL YOU REPAY IT. AND (PG 1-31 LI 10)

11 THAT IS EXACTLY WHAT HAPPENED HERE. ECCO GAS EXECUTED ITS TERM LOAN AGREEMENT, ITS NOTE, AND ONCE IT GOT THE MONEY AND GOT THE COLLATERAL TOGETHER-- MR. MONTGOMERY REFERENCED THE COLLATERAL-- IT'S SENT, THE NOTE, TERM LOAN AGREEMENT, BACK TO THE LENDER, MR. ZEPPEIRO. IT SENT THE COLLATERAL TO SEAMAN AND GRAHAM TO HOLD, AND THE MONIES WERE TRANSMITTED PHYSICALLY THROUGH MR. SEAMAN'S TRUST ACCOUNT TO THE NEW YORK ESCROW AGENT.

* (VOL I PG 1-31)

19 NOW, THROUGH MISMANAGEMENT OR MISFORTUNE OR WHATEVER, ECCO GAS IS DEFUNCT, AND IT DID NOT REPAY THE LOAN THAT MR. ZEPPEIRO MADE. THERE WAS A SUCCESSOR CORPORATION, THAT ONE IS ALSO APPARENTLY DEFUNCT, DID NOT PAY MR. ZEPPEIRO BACK. SO HE'S OVER HERE IN SOUTH CAROLINA PURSUING THE PERSON THAT WAS HOLDING THE COLLATERAL, MR. SEAMAN.

25> WE WILL PROVE THAT BOB SEAMAN DID NOT HAVE ANY OBLIGATION TO REPAY THIS LOAN, ECCO GAS DID. HE HAS NOT BREACHED THE ESCROW

AGREEMENT, HE DID EXACTLY WHAT THE ESCROW AGREEMENT CALLED FOR HIM TO DO, AND HE HAD NO DUTY TO RECORD THE COLLATERAL. (PG 1-32 LI 4)

5 NOW, THEY HAVEN'T EXPLAINED THAT YET, BUT THE EVIDENCE WILL COME OUT, YOU WILL BE ABLE TO SEE THOSE DOCUMENTS,THERE WAS NO DUTY TO RECORD THE COLLATERAL.

8 MR. MONTGOMERY HAS REFERENCED THE DEVELOPMENT AGREEMENT AND, AS HE SAID, THERE IS NO TESTIMONY THAT THE DEVELOPMENT AGREEMENT WAS EVER USED. NOW, THE PLAINTIFF HAS ALLEGED A BREACH OF FIDUCIARY DUTY, WE SUBMIT THE EVIDENCE WILL SHOW THAT THERE WAS NO BREACH OF ANY FIDUCIARY DUTY.

14> THE DAMAGE TO THE PLAINTIFF WAS THE FAILURE OF ECCO GAS TO REPAY. AND AS I SAID, THROUGH WHATEVER REASONS, TOTALLY UNRELATED TO THE LAW FIRM OVER IN SOUTH CAROLINA, THE CORPORATION OUT IN CALIFORNIA DIDN'T PAY ITS DEBT.

(GOES TO TT PG 1-37 LI 2)

2 Q. NOW, THE JURY IS GOING TO BE HEARING THE NAMES OF NUMBER OF PEOPLE IN THIS CASE,

OBVIOUSLY, AND THREE OF THOSE PEOPLE I THINK ARE CALLED MESSR. ALBANESE, MEADOWS, AND JACOBS. PROBABLY GOING TO HEAR THOSE NAMES A LOT, WOULD YOU AGREE?

A. YES, SIR.

Q. WHEN WAS THE FIRST TIME YOU EVER MET ANY ONE OF THOSE THREE PEOPLE, MR. ALBANESE, MR. MEADOWS, OR MR. JACOBS?

A. WELL, SIR, ONE THING I SHOULD POINT OUT, THIS WAS SIX YEARS AGO THIS HAPPENED, IT WAS IN THE LATTER PART OF 1983. I BELIEVE, TO THE BEST OF MY UNDERSTANDING, I MET THEM IN THE LATE SUMMER OF 1983. (TO PG 1-38 LI 16)

Q. IF YOU WILL JUST ANSWER MY QUESTIONS, I GET TO ASK YOU QUESTIONS-- (POTTS TALKING)

A. YES. YES. THE THING IS, I WAS SUED ON THIS MANY, MANY YEARS AGO AND I HAD TO TURN OVER ALL MY DOCUMENTS TO AN ATTORNEY IN OHIO, AND SINCE THEN I HAVEN'T SEEN THEM.(TO PG 1-40

NOW, SIR, THE FIRST QUESTION WAS, WHEN YOU MET ANY ONE OF THOSE PEOPLE, WHICH YOU SAID MID SUMMER, AND NOW WE ARE TALKING PROBABLY AUGUST:IS THAT RIGHT? C-6 PAGE 8

UNITED STATES COURT OF APPEALS

for the Fourth Circuit

UNITED STATES COURTHOUSE TENTH & MAIN STREETS

Richmond, Virginia 23219

November 29, 1990

JOHN M. GREACEN,CLERK (804) 771-2213

Mr. Douglas Zeppeiro

3069 Summit Circie

Camarillo, CA 93012

RE: Requests for copies of Exhibits

Dear Mr. Zeppeiro:

I am returning your check in the amount of $26.00 as after looking at the actual record on appeal, I have discovered that we have no exhibits. Apparently the exhibits are still in the U.S. Dist. Court in Columbia, SC.

Sincerely yours,

JOHN M. GREACEN

EFB/ (signed) By: Mrs. Ellen P. Belton

encl. Deputy Clerk

APPENDIX C-7

SEAMANS ALTERED COPY GIVEN PLAINTIFF DELETION OF TRI-SANDS NAME SHOWS ACTING IN CONCERT WITH EGDC FUNDS,ESCROW & CORP.FRAUDS ON GOING RICO!

October 25, 1983 MEMO

TO: **AL ALBANESE** **MARTIN MEADOWS**

PHIL ALLEN JIM SCOTT

WOODY DENNING & **GLADYS DENNING**, B.W. SMITH

CC: RICHARD GABRIEL,**BOB SEAMAN**,& TONY WARFFORD

FROM: DAVE ALBANESE

ENCLOSED YOU WILL FIND INCOME AND EXPENSE INFORMATION AS IT PERTAINS TO OUR EFFORTS TO PURCHASE **105** PRODUCING OIL AND /OR GAS WELLS FROM **MNR** PARTNERS AND **OHIO** DRILLING PARTNERS RESPECTIVELY. AS YOU ARE ALL AWARE, WE ARE RAISING OR HAVE RAISED AN ADDITIONAL $75,000 CAPITAL TO MEET THE OTHER EXPENSES IN THIS **OPPORTUNITY** SUCH AS LEGAL FEES,ACCOUNTING FEES,GEOLOGICAL FEES,BANK ESCROW FEES,PRINTING COSTS AND DIRECT EXPENSE REIMBURSEMENTS.

As you review the information,keep the following **dates** and amounts in mind to assist you in

determining the timing for the various disbursements:

1. Original letter agreement **August** 10,1983.
2. Initial deposit of **$262,500 Sept.12,1983.**
3. Amended Letter Agreement October 6, 1983.
4. Original **closing** date **December 2,1983.**
5. Amended closing date **February 1, 1984.**
6. Money necessary to close on **75** & **105** wells respectively. $1,587,500 on 75 wells $1,837K on **105** wells
7. Second deposit of $100,000 Dec.1,1983.
8. **COLLATERAL** LOAN REPAYMENT **MARCH 14,<1983>.**

1011 Hayfield, Greensboro,**N.C.**,**(919-299-6949-)** copy from **Seaman** deposition S.C. **00000224** This escrow **laundering** concealed over 5 years, Note **$262,500K funds** Seaman & Graham escrow & **divided agency** role of CORP.FRAUD VESTING to enterprises by **depleting** collateral & Assets of **EGDC Investors.** Mail wire.fraud knowingly & willfully with malice working in concert & formed enterprises for **6 state** escrow frauds.

SENT TO U.S.APPEAL alerted 9-11-90 AS EX-8-1

90-2435 Zeppeiro v. Seaman

U.S. Court of Appeals for the 4th Circuit, Va.

1. Did the district court fail to consider important grounds for relief? YES the court did on all eight counts.

1. Breach of Contract, 2. Breach of Fiduciary, 3. Negligence, 4. Fraud, 5. Fraudulent Inducement to Contract, 6. S. C. Securities Laws, 7. S.C. Unfair Trade Practices Act, 8. RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS ACT(RICO)

The plaintiffs material facts, expert witnesses being the Security Exchange Commission Stanley Lewis, Robert Lincoln, and the Ecco Gas Drilling Corp. Security Investors who are in the Seaman & Graham Escrow being Mr. & Mrs. J.W. Fuller, Thelma Andrews, Everett Stewart,James Scott. Expert witnesses Dr. Wayne Lockhart, Dr. Gerald Fielder. Dana Davis esquire of Seaman & Graham law firm, Martin Meadows, Anita Kirby, Edna Swartzbeck, Linda Kelley. These witnesses are relevant to plaintiffs pleadings in his law suit.

APPENDIX D

2. Did the district court incorrectly decide the facts? YES. If so what facts?

Exhibits

(1) Ecco Gas Drilling Corp. letterhead evidencing 4 offices N.C., S.C.,Ohio & Calif. Dear Participant attached Term loan, Development & Escrow agreements signed Martin meadows Vice President.

FACTS: The term loan is a security investment evidencing the security act of 1933 giving the plaintiff purchaser security working interest in 4 oil wells to be purchased by the seller.

(A1) Ecco Gas Drilling Corp. (here after EGDC) Schedule A

FACT: References 4 best of the 105 wells.

(A2) Fuller's forged initials to the security investment and escrow . Andrews, Fuller & plaintiff Zeppeiro are in the same security investment .

(B) Escrow Agreement Purchaser (Zeppeiro) seller (Ecco) Escrow agent Seaman & Graham.

(B1) Fuller's Escrow Initials **Forged.**

(C) Development Agreement references Security Act 1933 and consists of three pages. Evidences security working interest (%).

(20C) Plaintiffs Development Agreement Exhibits page 2 references: **Security Act of 1933.**

(20) Development Agreement Exhibit used at trial, page 2 has been **materially altered.** (Security Act of 1933 etc, has been **deleted.**)

(D) Collateral Agreement referencing: 9 oil wells & gold contract for the 1/2 million dollars capital to purchase **EGDC 105 wells.**

(D 10) Exhibit plaintiffs **10** collateral agreement 8-18-87 Robert. Seamans deposition **mislabeled** as plaintiffs exhibit **misrepresented**

(D340) Collateral agreement forged enlarged given in 1988 misnumbered.

(D134) Collateral Agreement **concealed** & **uncovered** by Zeppeiro August **89,** this copy is a **duplication** of (340) but 134 has hand

written text on the side saying were the monies from production assigned & sent to Seaman as well and other lines altered.

(E) EGDC schedule B plaintiffs 9 wells.

(E1) EGDC schedule B Thelma Andrews copy shows 8 wells. Misrepresented to Investors.

(E2) Shows the 9 oil wells working interest %, but only shows 23.75% on exhibit E represents Cecil Pottmeyer #4 30% shown never existed.

(F) Letter Gabriel to Seaman dated 8-17-83 with attachments, formation of EGDC purchase of 105 wells. Page 2 #3 escrow agreement between buyer & Ecco page 3 #5 articles of INC. of EGDC Ohio Corp. prepared by Paul Bertram, Ohio attorney. Page 3 par.4 EGDC acquires shares of ECCO & Interstate.

(F1) Letter Gabriel to Seaman 9-8-83 page 2 par.1 mentions 4 wells to the investors for the capital. Page 2 par. 3 mentions the litigation of ECCO & Cadora regarding collateral wells pledged for EGDC INVESTORS.

(G) Gold Search California not **vested** in Ecco gas. Zeppeiro notified Seaman on **8-15-83** Motion in Limine 12-1-89 (**concealed** from plaintiff) Defendant's Attorney Susan McWilliams violated the order. A motion for a new trial may be granted on the grounds that a violation of the order constituted and **irregularity** in the proceedings of the adverse party (See CCP 657 (1). A mistrial may be declared where the attorneys **misconduct** has seriously **prejudiced** an adverse parties claim or defense.

Motion in Limine given to the Defendants by Judge Henderson was a prejudicial error. The motion in Limine created **intentional tort** by S. McWilliams and a Constitutional tort. Plaintiff was not allowed to have any **expert witnesses** or other **witnesses** who were **investors** in ECCO GAS DRILLING CORP. SAME ESCROW **FRAUD.**

The defendants misrepresented **Statue of limitations** ran out on counts 6,7, & 8.

90-2435 Zeppeiro V.Seaman

Petitioner filed lawsuit at Washington Cty, Ohio 4-5-84 case 84 M 80 Court of Common Pleas.

Plaintiff had Stan Lewis SEC of S.C. go to Ohio in 1987 for deposition to bring forth **securities FRAUD.** Plaintiff gave over 250 exhibits involving **mail fraud,wire** fraud,**securities** fraud & **RICO** during a cease & desists S.C. Stan Lewis deposition was transcribed by Mc Williams Sept, 87 and concealed to 1989.

Plaintiff has included **100 pages** of the trial transcript for the **90-2435** Va. U.S. Appeal & Table of Contents I See Appendix D giving rise to RICO and on **going concerted acts.**

3. Do you think the district court applied the wrong law? Yes If so what law do you want applied? All the laws that have been violated to the eight counts that would be applicable.

4. Do you feel that there are any other reasons why the District Court Judgment was wrong? YES If so what? The district courts judgment was wrong do to the fact that

the defendant and the attorneys misrepresented the material facts of a case to the court and also presented fabricated facts to the jury. Also the court prejudiced Appellant by not allowing witnesses ,not allowing his Constitutional rights to a fair trial. I Could not bring forth all of the RICO,Embezzlement, Corp. Fraud & Breach of duty and on going concerted acts. Defendant Seaman committed perjury to the jury saying the collateral was the funds.

5. What action do you want the court to take in this case? A new trial and request Grand jury investigation for the securities fraud and the damage to over 250 investors.

6. If you think the court should hear oral argument in this case, ? Yes. Why do you think so ? The Court should hear oral argument do to the fact that plaintiff has been a victim of the **malicious abuse** of the legal process by the **Attorneys** who have **withheld** evidence,**altered** documents & Exhibits at depositions & at the trial in 1989, trying to recover investment,stock and **seizure of the 105 oil wells** and entitlement of 3 million dollars and the oil income production from the 105 wells and collateral wells and over riding royalty income that has been going to the enterprises. The enterprises are Interstate Drilling of Ohio,Tri-Sands Petro. of Va.,and the same group now using the name of a non-existent Va.,corporation using the Fairfax, Va. lawfirm office of **Mattick & Albanese** for Indigo Gas & oil of Fairfax, Va.and on going predicated rico act all working in concert.

PLAINTIFFS TABLE OF CONTENTS I

(1) Ecco Gas Drilling Corp. letterhead evidencing 4 offices N.C., S.C.,Ohio & Calif. Dear Participant attached Term loan, Development & Escrow agreements signed Martin meadows Vice President.

FACTS: The term loan is a security investment evidencing the security act of 1933 giving the plaintiff purchaser security working interest in 4 oil wells to be purchased by the seller.

(A1) Ecco Gas Drilling Corp. (here after EGDC) Schedule A

FACT: References 4 best of the 105 wells.

(A2) Fuller's forged initials to the security investment and escrow . Andrews, Fuller & plaintiff Zeppeiro are in the same security investment .

(B) Escrow Agreement Purchaser (Zeppeiro) seller (Ecco) Escrow agent Seaman & Graham.

(B1) Fuller's Escrow initials Forged.

(C) Development Agreement references Security Act 1933 and consists of three pages. Evidences security working interest (%).

(20C) Plaintiffs Development Agreement Exhibits page 2 references: Security Act of 1933.

(20) Development Agreement Exhibit used at trial, page 2 has been materially altered. (Security Act of 1933 etc, has been deleted.)

(D) Collateral Agreement referencing: 9 oil wells & gold contract for the 1/2 million dollars capital to purchase EGDC 105 wells.

(D 10) Exhibit plaintiffs 10 collateral agreement 8-18-87 Robert. Seamans deposition mislabeled as plaintiffs exhibit misrepresented

(D340) Collateral agreement forged enlarged given in 1988 misnumbered.

(D134) Collateral Agreement concealed & uncovered by Zeppeiro August 89, this copy is a duplication of (340) but 134 has hand written text on the side saying were the monies from production assigned & sent to Seaman as well and other lines altered.

(E1) EGDC schedule B Thelma Andrews copy shows 8 wells. Misrepresented to Investors.

(E2) Shows the 9 oil wells working interest %, but only shows 23.75% on exhibit E represents Cecil Pottmeyer #4 30% shown never existed.

(F) Letter Gabriel to Seaman dated 8-17-83 with attachments, formation of EGDC purchase of 105 wells. Page 2 #3 escrow agreement between buyer & Ecco page 3 #5 articles of INC. of EGDC Ohio Corp. prepared by Paul Bertram, Ohio attorney. Page 3 par.4 EGDC acquires shares of ECCO & Interstate.

(F1) Letter Gabriel to Seaman 9-8-83 page 2 par.1 mentions 4 wells to the investors for the capital. Page 2 par. 3 mentions the litigation of ECCO & Cadora regarding collateral wells pledged for EGDC INVESTORS.

90-2435 ZEPPEIRO VS SEAMAN TABLE CONTENTS II

8-17-83 GABRIEL / SEAMAN ECCO GAS DRILLING E-3

ZEPPEIRO-PHONE SEAMAN ESCROW-IOU-MERGER $ E-4

JACOBS/ZEPPEIRO S&G ESCROW-RELEASE-$-ETC E-5

9-8-83 GABRIEL/SEAMAN-EGDC-LITAGATION ETC. E-6

ALBANESE RE:SEAMAN-ZEPPEIRO-ESCROW-WELLS $ E-7

ALBANESE/SEAMAN-ESCROW SAME WELLS $ FRAUD E-8

TRI-SANDS EGDC FRAUD UNCOVERED-4-90 FRAUD E8-1

PLAINTIFFS ATTORNEYS NO RESPONSE ON COUNTS E-9

PLAINTIFFS ATTORNEY LETTER UNSENT 9-27-88 E-10

SEAMAN/GABRIEL RE: PURCHASE WELLS ESCROW E-11

AGREEMENTS PLAINTIFF TRIAL COPY EGDC NAME 8-2

AGREEMENTS TRIAL COPY JURY DIFFERENT ECCO 8-2A

THE PARTIES EXHIBIT JURY READS ECCO GAS 8-3

THE PARTIES EXHIBIT PLAINTIFFS READS EGDC 8-3A

PLAINTIFF TRI-SAND-MEADOWS CEASE-DESIST-I RICO

VOL 261 PG 416 OH.MEADOWS-ALBANESE RICO SALE#1

EGDC WELLS-LISPENDES OHIO-ALERTED SEC-FBI- VA.

TRI-SANDS SUSPENDED 3-24-86 ON GOING RICO #2

VOL 275 PG 447 OH.TRISAND-INDIGO 6-16-89-RICO3

PLAINTIFFS LISPENDES WELLS-TRISANDS-INDIGO BY

ALBANESE PRESIDENT ON GOING RICO 1-30-90. EX-H

JUDGMENT FILED:NOV. 19,1990

UNITED STATES COURT OF APPEALS

for the Fourth Circuit

CA 88-450

No. 90-2435

DOUGLAS ZEPPEIRO

Plaintiff - Appellant

V.

ROBERT E. SEAMAN, III; ROBERT E. SEAMAN, III, P.A. ,SEAMAN & GRAHAM, a South Carolina Partnership

Defendants - Appellees

APPEAL FROM the U.S. District Court for the District of South Carolina, at Columbia.

THIS CAUSE came on to be heard on the record from the United states District Court for the district of South Carolina.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the appellee's motion to dismiss is granted and the appeal is hereby dismissed.

JOHN M. GREACEN

CLERK

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED December 4, 1990

No. 90-2435

DOUGLAS ZEPPEIRO

Plaintiff - Appellant, PRO SE PARTY

V.

ROBERT E. SEAMAN, III; ROBERT E. SEAMAN,III, P.A. SEAMAN & GRAHAM, a South Carolina partnership

Defendants - Appellees

ORDER

Appellant has filed an untimely petition for rehearing and suggestion for rehearing in banc. This Court strictly enforces the time limits for filing petitions for rehearing and suggestions for rehearing in banc. I.O.P. 40.2.

Accordingly, IT IS ORDERED that the petition for rehearing and suggestion for rehearing and suggestion for rehearing in banc are denied as untimely filed.

APPENDIX D-2

THE AGREEMENTS JURY COPY ECCO GAS

Term Loan	ESCROW	Development
parties:	parties:	parties:
Doug Zeppeiro	Seaman & Graham	Doug Zeppeiro
Ecco Gas	Doug Zeppeiro	Ecco Gas
loaned by Zeppelro	Ecco Gas	deals with:
$ 50,000.00	Seaman collects monies	Drilling and
at 13% interest / year	deposits in trust account	development
due in 6 months	to disburse :	of new wells
secured by:	when TERM LOAN	
9 Oil Wells and Gold	and DEVELOPMENT	
Seaman to Secure	successfully close	

THE AGREEMENTS

Term Loan	ESCROW	Development
parties:	parties:	parties:
Doug Zeppeiro	Seaman & Graham	Doug Zeppeiro
Ecco Gas Drilling	Doug Zeppeiro	Ecco Gas Drilling
loaned by Zeppelro	Ecco Gas Drilling	deals with:
$ 50,000.00	Seaman collects monies	Drilling and
at 13% interest / year	deposits in trust account	development
due in 6 months	to disburse :	of new wells
secured by:	when TERM LOAN	
9 Oil Wells and Gold	and DEVELOPMENT	
Seaman to Secure	successfully close	

APPELLANT ALERTED U.S. APPEALS 9-11-90 AS E-2

"PLAINTIFF'S COPY ECCO GAS DRILLING CORP."
GIVEN AT TRIAL MISREPRESENTED & FORGERY

APPENDIX D-3

AMENDMENT 1 TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT 14 TO THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without Due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

writ has been held proper to compel an exercise of discretion when a trial court has refused to do so on the mistaken belief that it is without such authority [see Nadler v Superior Court (1967) 255 Cal App2d 523, 525, 63 Cal Rptr 352].

—Effect of Trial Delay Reduction Programs

A number of California counties have enacted delay reduction programs to implement the provisions of the Trial Court Delay Reduction Act of 1986, which prescribes various measures to improve the timely and expeditious resolution of civil and criminal actions [see Gov C §§ 68600–68619]. Local superior court rules adopted pursuant to the act provide strict guidelines for pretrial procedures. The nine counties designated by the Judicial Council to participate in the program are Alameda, Contra Costa, Kern, Los Angeles, Orange, Riverside, Sacramento, San Diego, and San Francisco. Other counties may voluntarily implement programs [see Gov C §§ 68605, 68618, 68618.5; see, e.g., local superior court rules for Fresno, Napa, Santa Barbara, and Yolo Counties].

Local rules enacted to implement the act may affect the procedure for motions in limine. Several counties require all motions in limine to be submitted in writing, with service completed, at least three days before the issue conference [see, e.g., Contra Costa County Sup Ct Rules, Rule 5(l); San Diego County Sup Ct Rules, Div VII, Rule 10.11(b)(2)]. One county requires that parties submit a list of potential motions in limine at the issue conference [see Alameda County Sup Ct Rule, Rule 4.7(1)]. In Los Angeles County, parties must file all motions in limine with timely notice so as to be heard by the time of the status conference, and no motions in limine may be heard after the conference except on a showing of good cause [Los Angeles County Sup Ct Rules, Rule 1106.5].

For further coverage of the act and the local delay reduction rules, see the article TRIAL COURT DELAY REDUCTION .

Violation of Order

An attorney who violates an in limine order by mentioning prohibited matter within the hearing of the jury may be cited for contempt [see CCP § 1209(a)(5)]. Moreover, a motion for a new trial may be granted on the ground that violation of the order

(*Text continued on page 9*)

constituted an irregularity in the proceedings of the adverse party [see CCP § 657(1)]. A mistrial may be declared where the attorney's misconduct has seriously prejudiced an adverse party's claim or defense [see CCP § 616; Witkin, California Procedure (2d ed), Vol. 4, *Trial,* §§ 130, 162, 166–169].

Review of Order

The order granting or denying the motion in limine is not appealable and review of the order by extraordinary writ will not usually be possible [see CCP §§ 904.1–904.2]. However, in a few situations, the court's decision may be reviewable by a writ of mandate or prohibition [see CCP §§ 1084–1086 (mandate); CCP §§ 1102–1103 (prohibition); cf. Pen C § 1538.5(i),(o) (authorizing use of these writs to review order granting or denying motion to suppress under Pen C § 1538.5)]. A writ of mandate is available to correct an error at law [see CCP § 1085]. A writ of prohibition may be used to arrest proceedings that are without or in excess of jurisdiction, or involve an error of constitutional dimension [see CCP § 1102]. Both writs require a showing that there is no plain, speedy, and adequate remedy in the ordinary course of law [see CCP §§ 1086, 1103]. For detailed discussions of these procedures, see the articles MANDATE and PROHIBITION.

—Appeal After Judgment

The erroneous granting or denial of a motion in limine does not, in itself, constitute reversible error, since on appeal the issue is not whether the motion was improperly granted or denied, but rather whether the evidence was improperly excluded or admitted at trial [Hartford Accident and Indemnity Co. v McCardell (Tex 1963) 369 SW2d 331, 335; see also Davis, "Pre-Trial Motions to Suppress Prejudicial Matters," 4 Trial Lawyers Q 43, 45 (1967)]. The appeal is taken from the rejection or admission of the evidence and not from the order on the motion.

— —Admission of Evidence

Where the error claimed is the erroneous admission of evidence, the verdict of the trial court may not be set aside on appeal unless the motion to exclude was timely and the specific ground of the motion clear [Ev C § 353]. Ev C § 353 does not specify when the objection is to be made. In Pierce v J.C. Penney Co. (1959) 167 Cal App2d 3, 5 fn 1, 13, 334 P2d 117, an objection to the admission of certain evidence on the general ground that it was immaterial was sufficient to preserve the is-

sue on appeal where the positions of the parties had been fully stated in a pretrial discussion in chambers. Thus, if a motion in limine is denied, it would seem to be unnecessary to object again when the evidence is actually admitted at trial. However, since the appellate courts have not yet ruled on this issue, counsel may wish to avoid any possibility of waiver by objecting again at trial or by obtaining a stipulation from the opposing party and a statement from the court that there is an objection to the admission of a particular type of evidence and the ground for such objection [see Witkin, California Evidence, *Introduction of Evidence at Trial*, § 1294].

— —Exclusion of Evidence

Before a judgment will be reversed on appeal because of the erroneous exclusion of evidence, an offer of proof is usually necessary unless the rulings of the court make compliance with this requirement futile [see Ev C § 354(a),(b)]. When the trial court has ruled or clearly intimated that it will receive no evidence of a particular type or class, or on a particular issue, the prejudicial nature of the exclusion of such evidence may be argued on appeal regardless of whether or not an offer of proof was made [see Lawless v Calaway (1944) 24 Cal2d 81, 91, 147 P2d 604]. Therefore, it appears that an offer of proof will not be necessary for appeal where exclusion of evidence was based on an order granting a motion in limine.

Further, it is arguable that an offer of proof may be made at a pretrial hearing on the motion by presenting the substance, purpose, and relevance of the evidence in question to the court by means of counter affidavits or declarations [see Ev C § 354 (offers of proof); CCP §§ 2009 (affidavits), 2015.5 (declarations)].

Ev C § 354 does not specify when an offer of proof is to be made. Although such offers have invariably been made at trial, there would seem to be no objection to allowing an offer of proof at a pretrial hearing where both parties are present and prepared to argue the evidence question. In Delta Dynamics, Inc. v Arioto (1968) 69 Cal2d 525, 527 fn 1, 72 Cal Rptr 785, 446 P2d 785, an appeal was allowed where the attempted offer of proof at trial, taken alone, was too general to provide a ground for appeal but the court had been sufficiently apprised of the substance, purpose, and relevance of the evidence at the pretrial conference.

thereto, and such examination should be permitted under Code Civ. Proc., § 2055, even though it calls for expert testimony.

[15] Appeal—Presenting and Reserving Objections—Exclusion of Evidence and Offer.—Where an entire class of evidence has been declared inadmissible or the trial court has fairly intimated that it will receive no evidence of a particular type or class, or upon a particular issue, an offer of proof is not a prerequisite to arguing on appeal the prejudicial nature of the exclusion of such evidence. (Disapproving *Thompson* v. *Buffums' Inc.*, 17 Cal.App.2d 401, 405, 62 P.2d 171; and *In re Claire*, 9 Cal.App.2d 749, 753, 50 P.2d 1070, in part.)

[16] Physicians—Malpractice—Appeal—Harmless and Reversible Error—Examination of Witnesses.—In a malpractice action based on an improper diagnosis of an ailment as ptomaine poisoning instead of as appendicitis, it was prejudicial error to limit the scope of the examination of defendant who was called as an adverse witness pursuant to Code Civ. Proc., § 2055, where, although favorable answers to the questions propounded would not have supplied the deficiency of proof as to the standard of skill and care ordinarily exercised by practitioners in the community under like circumstances, the questions were appropriate preliminaries to a more complete examination of the witness, and their exclusion cut off all inquiry on a subject in respect to which plaintiff was entitled to examine defendant.

[17] Appeal — Presenting and Reserving Objections — Nonsuit.— Grounds not specified in a motion for nonsuit will be considered by an appellate court only if it is clear that the defect is one which could not have been remedied had it been called to the attention of plaintiff by the motion. This rule is complementary to the requirement that a party specify the grounds on which his motion for nonsuit is based. (Overruling and disapproving contrary decisions and dicta.)

APPEAL from a judgment of the Superior Court of Fresno County. Ernest Klette, Judge. Reversed.

Action for damages for death of a minor child resulting from malpractice. Judgment of nonsuit reversed.

Julius Hansen and Rae B. Carter for Appellant.

Hadsell, Sweet, Ingalls & Carroll and Chester O. Hansen for Respondents.

GIBSON, C. J.—This is an appeal from a judgment of nonsuit entered in an action for malpractice which, it is

ROBERT E. SEAMAN, RESPONDENT STATED

October 1988 A U.S. Justice was

his law professor. Name not disclosed

APPENDIX G

Supreme Court, U.S.
FILED
MAY 10 1991
OFFICE OF THE CLERK

No. 90-1571

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

DOUGLAS ZEPPEIRO,
Petitioner,

v.

SEAMAN & GRAHAM, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF IN OPPOSITION

HAROLD W. JACOBS *
SUSAN PEDRICK MCWILLIAMS
NEXSEN PRUET JACOBS & POLLARD
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
Attorneys for Respondents
* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	2
CONCLUSION	8

TABLE OF AUTHORITIES

Cases: Page

Reed v. Ross, 468 U.S. 1 (1984) 4
Wainwright v. Sykes, 433 U.S. 72 (1977) 4
DeBenedetto v. Goodyear Tire & Rubber Company, 754 F.2d 512 (4th Cir. 1985) 4, 7
Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982) 4
Lavinthal v. I.T.S. Co., 55 F.2d 232 (3rd Cir. 1932) 3
Turner v. United States, 14 F.2d 360 (8th Cir. 1926) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1571

DOUGLAS ZEPPEIRO,

Petitioner,

v.

SEAMAN & GRAHAM, *et al.*,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner sued the respondents [1] for damages allegedly arising out of a $50,000 loan the petitioner made (along with others, who are not parties hereto) to Ecco Gas Corporation ("Ecco") (also not a party hereto). The collateral for the loan was a gold contract under which Ecco was to receive certain installments of gold and certain leasehold interests in existing oil wells in Ohio which Ecco owned. The collateral, evidenced by documents, was pledged and placed in the hands of respondent Seaman & Graham as escrow agent, which collateral the respondent was to hold until such time as the loan

---

[1] There were three respondents at trial: Robert E. Seaman III, a South Carolina lawyer, Robert E. Seaman III, P.A., Seaman's professional association, and Seaman & Graham, a South Carolina partnership of two professional associations.

was repaid. Respondent Seaman was the attorney who drafted the term loan agreement and escrow agreement, which documented the transaction between Ecco and the petitioner. The loan was never repaid and the petitioner has sued various persons and entities in Ohio and South Carolina.

The petitioner's five claims [2] against the respondents were: breach of contract, breach of fiduciary duty, negligence, fraud and fraudulent inducement to contract. Petitioner was represented at trial by counsel. All five causes of action were submitted to the jury, which returned a verdict in favor of the respondents on all counts.

The petitioner's trial counsel timely filed a motion for judgment notwithstanding the verdict, or, in the alternative, for a new trial. Thereafter, the petitioner's trial counsel moved to be relieved as counsel, which motion was granted. The petitioner then filed *pro se* a "Request and Pray to Courts for a Mistrial." On April 11, 1990, the Honorable Karen LeCraft Henderson, the trial judge, issued an Order denying the motions for JNOV or new trial and the petitioner's *pro se* "Request." Petitioner filed an untimely notice of appeal in the District Court and on November 19, 1990, the Fourth Circuit Court of Appeals dismissed the appeal as untimely. An untimely petition for rehearing and suggestion for rehearing in banc were also denied by the court of appeals. This petition followed.

REASONS FOR DENYING THE WRIT

The petition for certiorari challenges various trial court rulings, predominantly related to evidence either admitted or excluded. Although the petitioner attempts to cast the alleged errors of the trial court in terms of Constitutional violations, it is clear that there has

---

[2] The petitioner's original complaint contained eight causes of action. Three others, for alleged securities fraud and RICO violations and unfair trade practices, were dismissed on summary judgment prior to trial on the applicable statutes of limitation.

been no deprivation of any of the petitioner's First or Fourteenth Amendment rights, nor are there any other compelling reasons for granting the writ.

Furthermore, the petitioner had an opportunity to have these alleged errors reviewed by the Fourth Circuit Court of Appeals, but failed to timely appeal to that court. It is well-settled that a writ of certiorari may not be used as a substitute for an appeal. *Lavinthal v. I.T.S. Co.*, 55 F.2d 232 (3rd Cir. 1932); *Turner v. United States*, 14 F.2d 360, 361 (8th Cir. 1926).

Although it is extremely difficult to discern the petitioner's precise complaints in his petition due to his "stream of consciousness" style of argument, it appears the petitioner has five basic errors which he contends are sufficient to warrant the granting of the writ. They are:

1. petitioner's trial counsel consented to the redaction of irrelevant matters in a trial exhibit and withdrew an element of damages, allegedly without petitioner's consent;
2. the trial court's charge to the jury regarding fraud was misleading;
3. the trial court erroneously granted summary judgment on the securities fraud, RICO and unfair trade practices claims;
4. the trial court erred in excluding certain evidence and witnesses at trial and in its recitation of facts in its various orders; and
5. the respondents' counsel allegedly misrepresented facts in briefs filed by them with the district court and the court of appeals.

None of the above, even if true, which they are not, constitutes grounds for granting the writ, nor are there present any other reasons, such as those listed in Supreme Court Rule 10, that this Court should exercise its discretion of review in this case. A brief review of the intelligible issues raised by the petitioner follows.

Trial exhibits and withdrawn damages (Questions Presented Nos. 1, 6, 9, and 3).

Joint Trial Exhibit No. 1 was a document entitled "Term Loan Agreement". The Term Loan Agreement functioned as a note, whereby the petitioner and others loaned money to Ecco and Ecco obligated itself to repay the loan under certain terms and provisions thereof. During the trial, prior to Joint Exhibit 1 being shown to any witness or offered into evidence in any respect, the respondents moved for a redaction of certain language referring to securities laws in the term loan agreement on the ground that there was no cause of action for securities fraud in the case and that the language was superfluous and could possibly mislead the jury. The petitioner, who was represented by counsel at the trial, consented to the redaction through his counsel.

The petitioner now asserts as grounds for his Writ of Certiorari that the redaction misled the jury and violated his constitutional rights to a fair trial. This argument is fallacious for two reasons. First, the redacted language in no way related to any cause of action or issue in the case. Its redaction from the Joint Exhibit, therefore, could have absolutely no bearing on the jury's consideration of the various causes of action submitted to it at the end of the case. "The exclusion of evidence is squarely within the discretion of the trial judge. *Reed v. Tiffin Motor Homes, Inc.*, 697 F.2d 1192 (4th Cir. 1982), and cannot be reversed absent an abuse of that discretion." *DeBenedetto v. Goodyear Tire & Rubber Company*, 754 F.2d 512, 518 (4th Cir. 1985). No such abuse exists here.

Second, the redaction was consented to by all counsel and the exhibit was a joint one, meaning that it was entered into evidence without objection by either party. Therefore, any objection to the exhibit now raised on appeal was waived by the petitioner at trial. *See also Reed v. Ross*, 468 U.S. 1, 13 (1984) and *Wainwright v.*

Sykes, 433 U.S. 72, 91 and n.14 (1977) (habeas reviews). In that same vein, the petitioner's "argument" under Question Presented No. 9 that he uncovered "switched exhibits" and alerted the court of appeals of same is of no consequence, since the petitioner consented to the joint exhibits introduced at trial, including those from which material was redacted and failed to timely appeal any of the above to the Fourth Circuit.

Petitioner's third "Questions Presented" relates to the dismissal of an element of his damages at trial. Specifically, counsel for petitioner stipulated that he was withdrawing the petitioner's claim for emotional distress damages. In the first place, the petitioner was present at the trial and consented to his counsel's withdrawal of this element of damages. Any complaint petitioner now has with the way that his trial counsel handled the trial is not properly before this Court. *Reed*, *supra*, 368 U.S. at 13. Secondly, these damages would not have been recoverable by the petitioner as a matter of law under any of his causes of action. Thus, there was no error in petitioner's attorney dismissing this element of damages.

Trial court's charge to jury on fraud (Questions Presented Nos. 2, 4, and 5).

The petitioner asserts that the trial court erroneously charged the jury that the instant lawsuit arose out of the alleged mishandling of an escrow fund by respondents. Petitioner asserts that the instant lawsuit was actually a continuation of his original lawsuit in Ohio. No such argument was made at trial or before the Fourth Circuit. This Court should not address this argument for this reason alone.

Furthermore, as noted by the petitioner in his "statement of the case," Robert E. Seaman III was an original defendant in the petitioner's Ohio lawsuit, but was dismissed for lack of personal jurisdiction. Thereafter, petitioner filed this lawsuit against Seaman and the other

respondents. Any error in the dismissing of Seaman for lack of personal jurisdiction in Ohio would only be reviewable by the appropriate appellate court in Ohio, not by this Court. There is no evidence that the petitioner appealed the ruling in the Ohio state court. Therefore, any objection in this regard has been waived.

The petitioner also appears to invite this Court to review the trial court's charges to the jury regarding his fraud cause of action, claiming the jury was misled because the trial court charged the jury regarding fraud, fraud in the inducement, and constructive fraud. The petitioner certainly has no constitutional right to have a particular theory of recovery stated as a separate cause of action, nor is there any evidence whatsoever that the jury was misled in any way: the jury simply resolved all issues in favor of the respondents.

Granting of Partial Summary Judgment (Question Presented No. 10).

The petitioner contends that the trial court erred when it dismissed by summary judgment three causes of action originally pled by the petitioner, but barred by the applicable statute of limitations. The petitioner did not appeal the original order nor did he raise this argument at the JNOV or new trial stage or before the Fourth Circuit. Therefore, the issue is not properly before this Court. The petitioner's argument that this suit is a continuation of his action in Ohio, and thus that the statute of limitations has not run, is totally untrue and unsupported by any legal authority.

Exclusion of evidence and recitation of facts by trial court (Questions Presented Nos. 7, 11, 12, 13, 15, and 17).

Questions Presented Nos. 7, 11, 12, 13, 15, and 17 all appear to challenge evidence submitted at trial or recitations of the facts by the trial court in various orders

issued both pre- and post-trial. That petitioner disagrees with the jury's resolution of the evidence presented to it is obvious. However, the petitioner's nearly incomprehensible argument under these "Questions" does not raise a single reviewable issue. No timely appeal from any of the trial court's orders was made, thus making any argument in this petition utterly fruitless and a complete waste of this Court's time.

Misrepresentation of facts by respondents and counsel (Questions Presented Nos. 8, 14, and 16).

Finally, the petitioner attacks certain "misrepresentations" he believes the respondents or their counsel made at various stages of the case, including at trial and in pleadings. For example, under Question No. 14 the petitioner claims respondents and counsel misrepresented in a motion in limine the content and extent of knowledge certain witnesses the petitioner intended to call as a basis for excluding those witnesses at trial. In the first place, there is no evidence of any such misrepresentation. In the second, the petitioner has not perfected any appeal of the trial court's ruling on the motion in limine, and even if he had, he would have been unsuccessful, since, absent an abuse of discretion, the trial court's determination of the admissibility of evidence is not disturbed on appeal. *DeBenedetto*, *supra*, 754 F.2d at 518. Thirdly and ultimately, it is clear that the petitioner will not and perhaps cannot accept that he has had his day in court, with all relevant issues being submitted to the jury, and the jury has resolved his case against him. In other words, the petitioner refuses to accept that he has lost. To suggest, as the petitioner does under Question Presented No. 16, at p. 35, that there has been any failure of justice or mockery of the judicial system, after the petitioner has an ample opportunity to present his case and appeal any errors, is unfounded.

CONCLUSION

The petitioner seeks to appeal his loss at trial by invoking this Court's review under the guise of constitutional errors. The petition should be denied.

Respectfully submitted,

HAROLD W. JACOBS *
SUSAN PEDRICK MCWILLIAMS
NEXSEN PRUET JACOBS & POLLARD
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
Attorneys for Respondents

* Counsel of Record

No. 90-1571

Supreme Court, U.S.
FILED
MAY 24 1991
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

DOUGLAS ZEPPEIRO,
Petitioner,

v.

SEAMAN & GRAHAM, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF IN OPPOSITION

DOUGLAS ZEPPEIRO, PRO SE PARTY

3069 SUMMIT CIRCLE

CAMARILLO, CALIF., 93012

(805) 491-2856

Ap.

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
PETITIONER'S REPLY TO STATEMENTS OF CASE	1
JURY'S VERDICT RECEVIED MAY 20, 1991.....	5-6-7
REASONS FOR GRANTING THE WRIT.....	2
CONCLUSION	16

TABLE OF AUTHORITIES

Cases:	Page
HOUSTON v.HERRING 562 F.2d 347 (1977)	5
BOREL v. FIBREBOARD PAPER PRODUCTS CORP., 493 F.2d 1076,1100 (5th Cir. (1973)	5
MARTIN v. TEXACO, INC., 726 F. 2d 207.	5
WITKIN V. CALIF. CCP. 657 (1) CCP 616.	8
LAWLESS V. CALAWAY (1944) 24 Cal. 2d 81,91 147 P2d 604	8-12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1571

DOUGLAS ZEPPEIRO,

Petitioner,

v.

SEAMAN & GRAHAM, *et al.*,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY TO BRIEF IN OPPOSITION

STATEMENT OF THE CASE

PETITIONER'S REPLY TO STATEMENT OF CASE,

The respondents misrepresented the facts. FACTS: The petitioner invested $50,000.00 in ECCO GAS DRILLING CORP. security investment contract that was prepared and represented by Seaman & Graham giving security interest to investors in four of the best of 105 oil wells being purchased for ECCO GAS DRILLING CORP. (EGDC) by Seaman & Graham (S & G) trustee.

Investors would also receive 13% interest on funds and investment returned in 6 months and collateral of oil wells and gold contract as security which were owned by Ecco Gas Corp. a Nevada Corp. in addition Petitioner retained 10% stock of Ecco which was to be transferred to EGDC Stock and be on the Board and sign the obligation of $500 K as officer in the escrow. Respondents prereleased funds for the benefit of the enterprises and gave fraudulent vesting. SEE A TO A6 OF WRIT EGDC CONTRACT. Escrow funds embezzled and formation of N.C. Corp. Tri-Sands Petro and Ohio corp. Interstate Drilling involved by S & G as Divided Agency. This was investment and met the test of a Security ACT of 1933. **SEE: A2,3,5,.** -

REASONS FOR GRANTING THE WRIT

The reason for granting the petitioner's writ is that his constitutional rights have been violated and his rights to a fair trial in the due process clause of the 14th amendment along with 1st amendment.

The petitioner's reasons is based on the truth and the preponderance of his evidence not presented at trial. Some evidence used was materially altered, misrepresented, and copies to jury and petitioner vary which would prove a failure of justice and was not given his entitlement to a fair trial.

RESPONDENTS BRIEF IN OPPOSITION PAGE 2

The respondents and their attorneys reasons for denying the writ are misrepresented and fallacious. Respondents misrepresented the 4th Dist. S.C. & 4th Circuit U.S. Appeals, Va. The respondents & their Ohio attorneys played a divided agency role and misrepresented the Ohio courts. They now are misrepresenting U.S. Supreme Court. Petitioner give rise to the Supreme Court that on May 20, 1991 he received a certified copy of jurys verdict. The verdict snowed only on **4 counts** not 5 as **represented by the court and the respondents.** PAGE 2 Respondents states **5** causes **submitted** FIFTH being **FRAUDULENT INDUCEMENT TO CONTRACT.**

All 5 causes submitted to the jury which returned a verdict in favor of the respondents on all counts. On respondents INFORMAL BRIEF OF APPELLEES 90-2435 Va. Page 2 represents that 5 causes of action were presented to the jury the fifth being **CONSTRUCTIVE FRAUD** ALL 5 COUNTS IN FAVOR OF APPELLEES. Respondents to the U.S. Supreme Court states **FRAUDULENT INDUCEMENT TO CONTRACT.** FACTS ARE FABRICATED AND INCONSISTENT.

THE COURTS 4-12-90 order Appendix C-1 Page 2. states petitioner's original 8 counts. Page 3 court makes a prejudicial error and drops 6,7, & 8 concealed from petitioner & petitioner's attorneys never responded. Court states the remaining causes of action were tried before a jury which returned verdict if favor of the defendants. Court Misrepresents verdict. **See C-1 Page 14** The court finds only the following are relevant to his entitlement for a trial. **C-1 Page 15 #4** The courts **failure** to submit to the jury the plaintiffs fifth cause

for **FRAUDULENT INDUCEMENT TO CONTRACT.** SEE: C-1 PAGE 16 Finally the 4th ground is meritless because the court in fact **instructed** the jury on **FRAUDULENT INDUCEMENT TO CONTRACT** as part of its charge on common law fraud. **JUDGES CHARGES ON FRAUD** PAGE 9 & 10 QUOTE: NEXT I INSTRUCT YOU ON THE LAW CONCERNING THE PLAINTIFFS CLAIM FOR **FRAUD.** THE PLAINTIFFS FRAUD CLAIM SEEKS TO RECOVER FOR **FRAUD, FRAUD IN THE INDUCEMENT** AND FOR **CONSTRUCTIVE FRAUD**

IMPROPER INSTRUCTIONS TO THE JURY & MISREPRESENTING THE PETITIONER'S FRAUD CLAIM.

HOUSTON v.HERRING 562 F.2d 347 (1977)

BOREL v. FIBREBOARD PAPER PRODUCTS CORP., 493 F.2d 1076,1100 (5tn Cir. (1973)

MARTIN v. TEXACO, INC., 726 F. 2d 207.

JURY'S VERDICT ZEPPEIRO V. SEAMAN & GRAHAM

CERTIFIED COPY RECEIVED 5-20-91

A TRUE COPY Attest: Ann A. Birch. Clerk

by Stacey S. Wilson, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION

DOUGLAS ZEPPEIRO,	___ CIVIL ACTION
PLAINTIFF,	NO: 3:88-450-16
V.	
ROBERT E. SEAMAN III,	VERDICT
ROBERT E. SEAMAN,III,P.A.)	FILED DEC.8, 1989
and SEAMAN & GRAHAM, A	ANN A. BIRCH, CLERK
SOUTH CAROLINA PARTNERSHIP)	COLUMBIA, S.C.
DEFENDANTS._____)	

1. Do you find the defendants liable for breach of contract? ( ) yes (NO) no
2. Do you find the defendants liable for breach of fiduciary duty? ( ) yes (NO) no
3. Do you find the defendants liable for negligence? ( ) yes (NO) no
4. Do you find the defendants liable for fraud? ( ) yes (NO) no

IF YOU ANSWERED "NO" TO ALL OF THE ABOVE QUESTIONS, ENTER A VERDICT FOR THE DEFENDANTS ON THE BOTTOM OF PAGE 2 AND RETURN TO THE COURTROOM. IF YOU ANSWERED "YES" TO ANY ONE OR MORE OF THE ABOVE QUESTIONS, DO NOT ENTER A VERDICT FOR THE DEFENDANTS BUT PROCEED TO ANSWER QUESTIONS 5 AND 6 AND THEN ENTER A VERDICT FOR THE PLAINTIFF.

5. What amount of actual damages is the plaintiff entitled to recover? $_____

6. What amount of punitive damages, if any, is the plaintiff entitled to recover?

$_____

WE, THE JURY, unanimously find for the plaintiff in the amount(s) indicated above.

_____FOREMAN

Columbia, South Carolina December___, 1989 OR

WE, THE JURY, unanimously find for the defendants.

James M. Ricard, FOREMAN

Columbia, South Carolina December 8, 1989

The respondents and their attorneys misrepresent that there is no deprivation of petitioner's 1st & 14th admendment rights. FACTS: Violation of the Motion In Limine Order by respondents attorney. WITKIN v. CALIF. CCP. 657 (1) CCP 616. APPENDIX F OF WRIT EXCLUSION OF EVIDENCE: LAWLESS v. CALAWAY (1944) 24 Cal. 2d 81,91, 147 P2d 604 See Appendix F page 3. The Motion In Limine was an obstruction of justice & prevented petitioner from having a fair trial in violation of 14th admendment. **RESPONDENTS MISREPRESENTATIONS** The respondents are misrepresenting the highest tribunal in the nation and attempting to make a mockery of justice by misrepresenting the reasons for the petitioner's writ. FACTS: THE PETITIONER'S WRIT WAS TO BRING OUT THE IRREGULARITIES AT TRIAL, BEFORE TRIAL, CHALLENGING THE MOTION IN LIMINE CONCEALED AT BENCH. MATERIALLY ALTERING & DELETION OF SEC ACT OF 1933 AS REQUESTED BY RESPONDENTS & ALLOWED BY THE COURT CHANGING ITS LEGALITY.

FABRICATED EVIDENCE WAS GIVEN TO THE JURY CONCEALING COMPLETE ECCO GAS DRILLING CORP. INVESTMENT CONTRACT PREPARED BY RESPONDENTS AND MISLEADING THE JURY GIVING IT AN APPEARANCE AS A LOAN & NOTE TO A NON-EXISTANT ECCO GAS COLORADO CORP. AND RESPONDENTS ATTORNEY CALLING IT A CALIF. CORP. AND CONCEALING THAT THE ENTERPRISES EMBEZZLED AND BENEFITED AND DEFRAUDED AND DIVERTED EGDC INVESTORS FUNDS AND OIL WELLS WITH ECCO GAS CORP. OIL WELLS AND ASSETTS. RESPONDENTS SEAMAN & GRAHAM USING THEIR OFFICE ACTING IN CONCERT SET UP THE ENTERPRISES. **SEE C-6 PAGE 4 LINE 11 TO** C-6OF THE PETITIONER'S WRIT. RESPONDENTS AND THEIR ATTORNEYS INCLUDING PETITIONER'S ATTORNEYS INTENTIONAL MISCONDUCT MALICIOUSLY ABUSING THE JUDICIAL SYSTEM. **(Respondents Brief In Opposition Page 3)** Respondents misrepresented the facts. FACTS: Petitioner gave rise to U.S. Court of appeals twice and 4 phone calls alerting timely. **See Appendix D to D 12 & C-7.** Petitioner is not using the

Writ of Certiorari as a substitute for an appeal. Petitioner is using the writ for what it was designed for: PROVE THAT THE PETITIONER'S CONSTITUTIONAL RIGHTS WERE VIOLATED AND TO GIVE PETITIONER HIS RIGHTS TO A FAIR TRIAL A BASIC CONSTITUTIONAL **GUARANTEE** CONTAINED IN THE DUE PROCESS LAW OF THE 14TH AMENDMENT ON THE **200TH ANNIVERSARY OF BILL OF RIGHTS!**

The petitioner's complaints in the petition were precise and factual with EGDC Investors at trial and expert witnesses being available SEC of S.C. deputy and attorney and Doctor, reports,exhibits, and material facts and preponderence of evidence and contracts would support and prove petitioner's complaints. Respondents misrepresents that there are 5 basic errors when they are numerous violations being called out in Questions Presented. All of the 5 errors called out on page 3 are true except for portion of number 1. Petitioner and petitioner's attorney did not consent to the materially altering of the

relevant matter that respondents calls out as irrelevant. **See Appendix C-5 page 13 line 11 to C-5 page 14.** Closed Court concealed at Bench Motion in Limine. Petitioner's request prior to trial and heard 3 days later without jury present on EGDC fraud and commingling of funds laundered. **See Appendix C-5 page 21 to C-5 page 26.** Jury & Petitioner not afforded full disclosure rights to a fair trial. These are grounds for granting the writ and there are other reasons listed in Supreme Court Rule 10 being (a) & (c).

RESPONDENTS BRIEF PAGE 4 QUESTIONS 1,6,9 & 3

Misrepresentations by the respondents on Q 1. The SEC Act of 1933 on Petitioners Term Loan Agreement was not superfluous as respondents state. It was investment in a security by law it had to be on the petitioner's EGDC Contract & including the Development agreement #20 exhibit of plaintiff also materially altered. This was a material fact that was needed to be presented to the jury for their verdict.

There was an **abuse** as to the **Exclusion of Evidence.** LAWLESS V. CALAWAY 24 Cal. 2d 81,91, 147 P 2d 604 Appendix **F** Page 3 **Question 6** Failure to discuss by the respondents because material facts prove petitioner's claims. THE PETITIONER'S COMPLETE ECCO GAS DRILLING CORP. INVESTMENT CONTRACT PREPARED BY ESCROW AGENTS SEAMAN & GRAHAM P.A. AND THEIR INVOLVEMENT WAS CONCEALED FROM THE JURY. SEE QUESTION 6 ON PAGE 12 STATEMENT OF THE CASE. **Question 9** Petitioner alerted the U.S. Court of Appeals on 9-11-90 included exhibits tampered, mentioned irregularities at the trial and acts of Intentional Misconduct of Respondents & Petitioner's attorneys violating rights to fair trial. SEE page 21 for #9. & **Appendix D page 9,10,11,12** Table of Contents **I & II.** Question 3 Petitioner did not consent to his counsel's withdrawal of claim for emotional distress which was concealed at the bench and a violation of the 14th amendment. Petitioner's claim for emotional distress would be

recoverable as matter of fact. The stresses of being defrauded and losing his assets have taken a toal emotionally on the petitioner. SEE Writ page 8. **Reply to 2** It is a continuation of petitioner's OHIO lawsuit. See Page 5 of Writ. Respondents are misrepresenting the U.S. Supreme Court. Petitioner is not trying to have the trial courts charges to the jury as separate cause of action. He is trying to show that the judge did **give Improper Instrucions to the juryand** misrepresented petitioner's fraud claims and took them out of context and confused the jury. **Reply to 2 4 & 5** See on pages 5,9,10 & 11 of Statements of Case. Question 10 Reply **TRIAL COURT ERRED**when it gave a partial summary judgement on 6, Violation of S.C. Securities laws, 7 violation of S.C. Unfair Trade Practices Act & 8 RICO. The 9-19-88 order concealed from petitioner prior to trial. Petitioner's material facts would have precluded the granting of a summary judgement Obstructing Justice. The on going

predicated acts uncovered by petitioner and given to his attorneys and the SEC in 1984 & 1988,89, & 90. Petitioner's attorneys acting in concert with respondents attorneys in S.C. and Ohio and petitioners attorneys in Ohio. Concealing on going conspiracy through the courts which evidence petitioner has uncovered showing divided agency of a judge in Ohio and misrepresentations and errors by judges in other courts in S.C. & Ohio divided agency of attorneys in S.C. & Ohio, Va., N.C. & Calif. **REPLY** TO 7, 11, 12, 13, 15 & 17 **MISREPRESENTS THE QUESTIONS.** NO.7 represents respondents divided agency role while escrow agent for EGDC Investors contracts and guilty of Fraudulent Conversion for the enterprises. See FACTS on Page 15 NO. 11 Discusses the courts prejudicial errors on order of 2-24-89 Page 23 NO. 12 relates to Respondents attorneys violation of the Motion in Limine Order creating a Constitutional Tort see Page 26. NO. 13 Relates to respondents attorney stating prior

to filing this motion she made a good faith effort to resolve the matters herein. See Pages 27, 28, and 29. NO.15 Discusses the prejudicial errors by the court on the orders of 12-11-89 and 4-12-90 and at trial. See Pages 31 to 35. No.17 Marty Martin employee of ECCO GAS DRILLING CORP OHIO OFFICE testimony reinforces petitioner's position in EGDC as 10% stock holder and Investor for the purchase of 105 oil wells for EGDC Corp that S & G represented and their involvement of respondents. See C-5 Page 31 to C-5 Page 40. **Question 8** Not discussed by respondent. Was the jury presented with fabricated facts by the respondents & their attorneys? The reason for not discussing **8** the facts prove the concerted acts in the conspiaracy acting in concert knowingly & willfully with malice to conceal petitioners complete EGDC Contract and conceal the collateral fraud & represented collateral as the funds. See 18, 19, 20, & 21.Misrepresentations by respondents **C-5 page 9**.The EGDC

Investors same contracts, collateral & funds in same transaction. NO. 14 The respondents attorneys misrepresented the motion in limine as to the content and knowledge of certain witnesses & Investors and also violated the order. See Page 29. **No.16** Respondent attorneys misrepresented count on **Informal Brief of Appellees** stating 5th count was **Constructive Fraud.** See Page 10 and to the **Supreme Court Brief in Opposition** Page 2 represents the 5th being **Fraudulent Inducement to Contract.** Facts are inconsistent and fabricated. NO 16 Page 35 Respondents are guilty on all 8 counts.

C O N C L U S I O N

WE PRAY TO THE COURT THAT THEY WILL GRANT PETITIONER THE WRIT OF CERTIORARI GIVING HIS RIGHTS TO FREEDOM OF SPEECH AND A FAIR TRIAL GUARANTEED UNDER THE 1ST & 14TH AMENDMENTS.

Respectfully submitted,

Douglas Zeppeiro May 21, 1991.

Douglas Zeppeiro, Petitioner, PRO SE PARTY
3069 Summit Circle, Camarillo, Ca., 93012